TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 287

GERYS DESSALERNOS, PETITIONER,

vs.

JOSEPH SAVORETTI, DISTRICT DIRECTOR OF UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, MIAMI, FLORIDA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1957
CERTIORARI GRANTED OCTOBER 14, 1957

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 24, 1958

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[fol. A] [Caption omitted]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

Action for Declaratory Judgment

No. 6080-M-Civil

Gerys Dessalernos, Miami, Florida, Plaintiff,

v.

Joseph Savoretti, District Director, United States Immigration and Naturalization Service, Miami, Florida, as Agent for Herbert Brownell, Attorney General of the United States, Defendant.

Complaint—Filed February 21, 1955

The plaintiff, Gerys Dessalernos, respectfully alleges:

1. That this is an action for declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for review pursuant to the Administrative Procedure Act (5 U.S.C. 1001, et seq.) and the Immigration and Nationality Act (8 U.S.C. 1252).

2. The plaintiff is a native and citizen of Greece, resident in Miami, Dade County, Florida.

3. The defendant is resident in Miami, Dade County, Florida, and is the District Director of the United States [fol. 2] Immigration and Naturalization Service, and as such charged with the statutory duty to carry out the powers of the Attorney General of the United States relating to the deportation of aliens from the United States.

4. The plaintiff entered the United States on March 11, 1947, at Philadelphia, Pennsylvania, as a seaman and has

resided illegally in the United States since that date, without interruption.

5. On or about June, 1954, the plaintiff submitted himself to deportation proceedings before the United States Immigration and Naturalization Service and requested that his status be adjusted to that of a permanent resident by an application for suspension of deportation under the provisions of 8 U.S.C. 1254(a)(1).

6. On September 1, 1954, the plaintiff received notice that his application for suspension of deportation under this section had been denied for the reason that it had been determined in a hearing that he was subject to deportation under the provisions of 8 U.S.C. 1251(a)(5) for failure to submit his annual address report card. The Special Inquiry Officer reasoned, as a result thereof, that he would have to prove eligibility for suspension of deportation under 8 U.S.C. Section 1254(a)(5) as being deportable on a status acquired subsequent to his entry.

7. Section 1254(a)(5) provides that the person qualifying for suspension of deportation under that section must have ten years of continuous residence in the United States immediately following the commission of an act or assump- [fol. 3] tion of a status constituting a ground for deportation. The Special Inquiry Officer found that the plaintiff did not have the required ten years of physical presence in the United States, as specified in that section and was thus ineligible for suspension of deportation.

8. Section 1254(a)(1) of 8 U.S.C. provides:

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

"(1) applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or"

The plaintiff does qualify under all the provisions of this section, and alleges that the provisions of Section 1254(a) [fol. 4] (5) of 8 U.S.C. do not impair his eligibility thereunder for meeting the statutory qualifications of Section 1254(a)(5) of 8 U.S.C.

9. That on November 26, 1954, the Board of Immigration Appeals upheld the decision of the Special Inquiry Officer and dismissed plaintiff's appeal, finding that the plaintiff must establish eligibility under Section 1254(a)(5) of 8 U.S.C.

10. That the finding that the plaintiff could not be granted suspension of deportation under 8 U.S.C. Sec. 1254(a)(1) is erroneous and contrary to law, and that the plaintiff is entitled to consideration under the provisions of 8 U.S.C. Section 1254(a)(1) and the granting of suspension of deportation upon the proving of eligibility thereunder.

11. That there does exist between the plaintiff and the defendant a judiciable controversy of the interpretation of a statute of the United States.

12. That defendant is threatening to take plaintiff into custody and deport him and, unless restrained, will do so, causing plaintiff irreparable injury:

Wherefore, plaintiff prays for a judgment declaring:

(a) That the deportation order herein was null and void;

(b) That the plaintiff is statutorily eligible for suspension of deportation under the provisions of 8 U.S.C. Section 1254(a)(1);

[fol. 5] (c) That the proceedings be remanded to be reopened and reconsidered pursuant to the order of the Court;

(d) Restraining the defendant from taking the plaintiff into custody and deporting him;

(e) Such other and further relief as may be appropriate in the premises.

Walters, Moore & Costanzo, Attorneys for Plaintiff,
by /s/ David W. Walters.

Duly sworn to by David W. Walters, jurat omitted in printing.

[fol. 6] IN UNITED STATES DISTRICT COURT

MOTION FOR PRELIMINARY INJUNCTION—Filed February 21, 1955

The plaintiff, by his undersigned attorneys, moves the Court for an order granting a preliminary injunction against the defendant, restraining the defendant from apprehending and deporting plaintiff pending determination of this suit and until further order of the Court, upon the grounds and in accordance with the prayers set forth in the complaint.

Walters, Moore & Costanzo, Attorneys for Plaintiff,
by /s/ David W. Walters.

Certificate of service (omitted in printing).

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING—Filed February 21, 1955

To: The Honorable Jas. L. Guilmartin, United States Attorney, Post Office Building, Miami, Florida.

You Will Please Take Notice that on Thursday, February 24, 1955, at 10:00 A.M., we will call up for hearing before [fol. 7] The Honorable John W. Holland, Chief Judge of the above Court, in his chambers in the Post Office Building, Miami, Florida, the plaintiff's motion for preliminary injunction heretofore filed in the above-styled cause.

Walters, Moore & Costanzo, Attorneys for Plaintiff,
by /s/ David W. Walters.

(Certificate of deliverance.)

IN UNITED STATES DISTRICT COURT

ORDER GRANTING PRELIMINARY INJUNCTION—
March 1, 1955

Upon consideration of the complaint, motion for preliminary injunction, and arguments of counsel for plaintiff and defendant, and it appearing that the deportation of the plaintiff is imminent and that he would suffer irreparable damage by reason thereof, it is

Ordered, Adjudged and Decreed that plaintiff's motion for preliminary injunction be, and the same is hereby, granted, and the defendant is herewith restrained from removing plaintiff from the jurisdiction of this Court for a period of not to exceed ten (10) days from the date hereof, or until further order of this Court.

[fol. 8] Done and Ordered in Chambers, this 1st day of March, A. D. 1955, at Miami, Florida.

John W. Holland, Chief Judge.

(Certificate of service.)

IN UNITED STATES DISTRICT COURT

MOTION FOR SUMMARY JUDGMENT—Filed March 9, 1955

The plaintiff, Gerys Dessalernos, by his undersigned attorneys, hereby moves the Court to enter a summary judgment for the plaintiff in accordance with the provisions of Rule 56 of the Federal Rules of Civil Procedure on the ground that the pleadings and affidavit attached hereto, marked "Exhibit A", show that there is no genuine issue of fact, and that the plaintiff is entitled to ujdgment (sic) as a matter of law.

Walters, Moore & Costanzo, Attorneys for Plaintiff,
by /s/ David W. Walters.

(Certificate of service.)

[fol. 9] AFFIDAVIT OF DAVID W. WALTERS

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, David W. Walters of Walters, Moore & Costanzo, attorneys for the plaintiff, Gerys Dessalernos, who, being by me first duly sworn on oath, deposes and says as follows:

That he is attorney for the plaintiff in the above-styled cause; that he did receive from the Board of Immigration Appeals the attached decision, dated November 26, 1954, which decision is the final administrative decision in the deportation proceedings of Gerys Dessalernos; that application was made for suspension of deportation on behalf of the plaintiff under the provisions of Section 244(a)(1) of the Immigration and Nationality Act, but that the plaintiff's application was not considered under the provisions of that section, and he was erroneously forced to meet the requirements of Section 244(a)(5), despite his pleas to the contrary; that plaintiff has no other administrative remedies available to him, and he has exhausted all administrative remedies in his appeal to the Board of Immigration Appeals.

Further affiant sayeth not.

/s/ David W. Walters.

Subscribed and sworn to before me this 8th day of March, A. D. 1955.

/s/ Irene S. Driver, Notary Public, State of Florida at Large.

(Notary Seal.)

My commission expires Sept. 18, 1955.
Bonded by American Surety Co. of N. Y.

[fol. 10] PLAINTIFF'S EXHIBIT "A" TO MOTION FOR SUMMARY JUDGMENT

U. S. Department of Justice
Board of Immigration Appeals.

Nov 26 1954

File: 1200-54817—Seattle

In Re: Gerys Dessalernos

In Deportation Proceedings.

In Behalf of Respondent:
David W. Walters, Esquire
1409 Biscayne Building
Miami 32, Florida

Charges:

Warrant: Immigration and Nationality Act of 1952—Seaman, failed to comply with conditions of admission.

Lodged: Immigration and Nationality Act of 1952—Failure to furnish notification of address and other information.

Application:
Suspension of deportation.

Detention Status:
Released on bond.

This case comes forward on appeal from an order entered by a special inquiry officer on September 1, 1954, denying the respondent's application requesting that his [fol. 11] deportation be suspended under the provisions of section 244(a)(5) of the Immigration and Nationality Act of 1952 and directing that he be deported from the United States pursuant to law on the charge stated in the warrant of arrest and on the charge lodged during the hearing conducted under the warrant of arrest.

The respondent, a 43-year-old single male, native and citizen of Greece, has resided continuously in the United States since his admission at Philadelphia, Pennsylvania on March 11, 1947, as a seaman, at which time it was his intention to reship foreign. He has never applied for or been granted an extension of his temporary period of admission. Likewise, he has never been admitted to the United States for permanent residence. The respondent has one brother, a citizen of the United States living in Miami, Florida. He has no dependents in this country. The record reflects that the respondent failed to furnish notification of his address during January 1953 and January 1954 or other information in compliance with the provisions of section 265 of the Immigration and Nationality Act of 1952. The respondent has not established to the satisfaction of the Attorney General that his failure to furnish the aforementioned information was reasonable excusable or was not wilfull. On this record he is clearly subject to deportation on the charge stated in the warrant issued for his arrest on June 4, 1954 and under the provisions of section 241(a)(5) of the Immigration and Nationality Act of 1952, which charge was lodged during the hearing conducted under the warrant of arrest.

[fol. 12] Counsel by brief on appeal asserted that the respondent is eligible for suspension of deportation under the provisions of section 244(a)(1) of the Immigration and Nationality Act of 1952 and that his deportability under section 241(a)(5) of such Act would not impair his eligibility for suspension of deportation under the aforementioned section 244(a)(1) of the Immigration and Nationality Act. Counsel further asserted that because the respondent is ineligible for suspension of deportation under the provisions of section 244(a)(5), this ineligiblity would not exclude her from establishing eligibility under the aforementioned section 244(a)(1) of said Act. The record clearly shows that the respondent is subject to deportation under the provisions of section 241(a)(5) of the Act of 1952 and he is a member of one of the classes of persons enumerated in section 244(a)(5) of the Immigration and Nationality Act whose deportation may be suspended in the discretion of the Attorney General. In view thereof, his application for suspension of deportation under the Immigration and Nationality Act of 1952 must be considered under section 244(a)(5) of the Immigration and Nationality Act. However, he is ineligible for such relief, since among other things, he does not meet the physical requirements of section 244(a)(5), supra.

After carefully considering all the evidence of record together with counsel's representations by brief on appeal, we find nothing therein that would cause us to make any change in the decision of the special inquiry officer, inasmuch as no request has been made for the alternative relief of voluntary departure. Accordingly, the following order will be entered,

[fol. 13] Order: It is ordered that the appeal be dismissed.

Chairman.

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING ON MOTION FOR SUMMARY JUDGMENT—Filed March 9, 1955

To: The Honorable Jas. L. Guilmartin, United States Attorney, Post Office Building, Miami, Florida.

You Will Please Take Notice that on Monday, May 23, 1955, at 2:00 P.M., we will call up for hearing before The Honorable John W. Holland, Chief Judge of the above Court, in his chambers in the Post Office Building, Miami, Florida, the plaintiff's motion for summary judgment heretofore filed in the above styled cause.

Walters, Moore & Costanzo, Attorneys for Plaintiff,
by /s/ David W. Walters.

(Certificate of service.)

[fol. 14] IN UNITED STATES DISTRICT COURT

ANSWER—Filed May 10, 1955

Comes now the defendant in answer to the Declaratory Judgment herein and says:

1. That the Plaintiff is an alien.

2. That the Plaintiff was ordered deported and said order of deportation was entered after a deportation hearing was conducted in accordance with the laws and regulations. Official deportation record No. 1200-54817-Seattle is attached to this answer and made a part hereof. It is requested that such record be returned to the defendant at the conclusion of these proceedings.

3. The Defendant admits the allegations contained in Paragraphs 1, 2, 3, 4, 6 and 7.

4. In answer to Paragraph 5, the Defendant is without knowledge or information concerning the truth or falsity of the allegations contained in said paragraph.

5. Defendant admits the allegations contained in Paragraph 8, but denies those alleging the impropriety of the administrative denial of petitioner's application for suspension of deportation.

6. Defendant admits the allegations contained in Paragraph 9, but denies the allegations contained in paragraphs 10 and 11. The deportation record contains adequate [fol. 15] evidence to support the findings of the Attorney General in that the Plaintiff is subject to deportation under the provisions of Section 241(a)(5) of the Immigration and Nationality Act of 1952 and that he is a member of

one of the classes of persons enumerated in Sections 244 (a)(5) of the Immigration and Nationality Act.

7. Defendant further says that the Plaintiff's application for suspension of deportation under the aforesaid act must be considered under Section 244(a)(5) Immigration and Nationality Act.

8. Defendant further says that the Plaintiff is ineligible for the aforesaid relief since, among other things, he does not meet the physical requirements of Section 244(a)(5), supra.

James L. Guilmartin, United States Attorney, by /s/ Anthony S. Battaglia, Assistant U. S. Attorney.

ATTACHMENT TO ANSWER

United States Department of Justice, Immigration and Naturalization Service, Seattle, Washington

Gerys Dessalernos, Respondent
1200-54817

Warrant Hearing:

Date: July 20, 1954.

Place: Seattle, Washington.

Special Inquiry Officer: George S. Dailey.

Stenographer: Marie Mielke.

[fol. 16] Alien's Representative: Jeffrey Heiman, Attorney at Law, 530 1411-4th Avenue Bldg., Seattle, Washington.

Special Inquiry Officer to Respondent:

Q. What language do you speak and understand?
A. I understand English.
Q. This hearing is convened pursuant to notice. The hearing will be conducted in the English language. What is your name?
A. Gerys Dessalernos.

Q. Will you stand and be sworn? (complies) Do you solemnly swear that all the statements you will make will be the truth, the whole truth and nothing but the truth, so help you God?

A. I do.

Q. You are advised that in this matter you may be represented by counsel who may be an attorney at law or any other person authorized to appear before the Immigration and Naturalization Service and the Board of Immigration Appeals. Such representation must be at your own expense. Do you desire to be represented?

A. Yes.

Q. Do you have your attorney with you?

A. That's right.

By Special Inquiry Officer to Counsel:

Q. Will you give your name, sir, for the record?

A. Jeffrey Heiman, 411 4th Avenue Building, Seattle, Washington.

Q. Have you been admitted to practice before this Service?

A. I have.

[fol. 17] Q. Have you filed notice of appearance in this case?

A. I have.

Q. Mr. Dessalernos, is it your wish that Jeffrey Heiman represent you in this matter?

A. Yes.

Q. I have here a warrant of arrest of an alien which charges that Gerasimos Desalernos, alias Jery Desalernos, alias Gerys Dessalernos who entered the United States at Philadelphia, Pennsylvania, March 13, 1947 is charged with being illegally in the United States in that after admission to the United States as a nonimmigrant, to wit, a seaman under section 3(5) of the Immigration Act of 1924, he failed to comply with the conditions of such status. Do you understand this charge?

A. I understand.

Q. Have you been served with this warrant of arrest as shown on the reverse at Seattle, Washington, on June 28, 1954?

A. Yes.

Q. Were you given a copy of the warrant of arrest at that time?

A. Yes.

Q. You are advised that you will have a reasonable opportunity to examine the evidence against you, to present evidence in your own behalf, and to cross-examine any witnesses presented by the Government. Do you understand?

A. Yes.

Special Inquiry Officer to Counsel:

Q. Counsel, have you had an opportunity to examine the warrant of arrest?

A. Yes.

[fol. 18] By Special Inquiry Officer to Respondent:

Q. This warrant will be entered in the record and marked Exhibit 1. Have you ever been known by any name other than Gerys Dessalermos?

A. Over here that is the name. For shorter they used Jery. In the old country—Gerasimos.

Q. Have you ever used any other name?

A. No.

Q. When and where were you born?

A. In the village of Karia Kefalinias, Greece, on May 20, 1911.

Q. How old are you now?

A. 43.

Q. When and where did you last enter the United States?

A. In Philadelphia, Penn., March 17, 1947 or 13th.

Q. On what ship?

A. Aristocratis.

Q. I have here form I-405A showing the entry of one Gerasimos Desalernos on March 11, 1947 on the Aristocratis at Philadelphia, Penn.

A. March 11?

Q. Yes.

A. I had the permission of the captain, I think it was, in those papers and the permission after two or three days after we (sic) came to relieve me from the ship.

Q. I show you this record and ask you if it relates to your last entry into the United States?

A. That's right.

Q. This is your record?

A. That's right.

Q. Form I-405A showing arrival of Gerasimos Desalernos will be entered into the record and marked Exhibit 2. Subsequent to your arrival on March 11, 1947 as a 3(5) [fol. 19] seaman, did you ever go to an Immigration office and ask permission to remain in the United States?

A. No.

Q. Did you ever apply for an extension of your stay?

A. No.

Q. At the time you entered, you were admitted only for the time the vessel was to remain in port or not to exceed 29 days. Was that your understanding?

A. Yes, for 29 days.

Q. What was your intention when you left the boat?

A. My intention was to go and see my brother. That's the only person I have in this world—the only close relative.

Q. Did you intend to ship out again?

A. I didn't know this time. I wanted to see my brother. I had some troubles and I went to the hospital and I planned later to go again to the ships but it take time. A month after was there—after I was in the hospital—I stayed in the hospital two weeks—when I went out I felt a little weak. Always I say, "Later".

Q. What was your intention on the day you left the vessel? Did you intend too (sic) remain permanently in the United States or did you intend to visit your brother and then leave again?

A. I had in mind to visit my brother and leave.

Q. Had you been in the United States before you came March 11, 1947?

A. No.

Q. How long had you been a seaman at the time you came in 1947?

[fol. 20] A. I was just on the ships for working a part of a year but in 1940—I don't remember exactly—it is in my seaman's book—but altogether I think it was a year and a half and three years. I wasn't a real sailor. I liked to go on ships for a little time. Usually I was working in the capitol—Athens.

Q. What was your occupation in Athens before going to sea?

A. A big store, candy store, bread, bakery.

Q. What did you do?

A. I did everything. I start baker. Later I was the chief steward of the store and later I was working a year and a half a bookkeeper.

Q. What was your last address?

A. The same building. I was living with the owner.

Q. What address was that?

A. They change the name of the store. That's on—it was University Avenue 57 in Greece, Banepistimiou, 57, Athens.

Q. How long had you been living at that address?

A. I went there many times during the war time—about six months the last time.

Q. Where was your father born?

A. The same village I was born.

Q. What was his name?

A. Fotios Desalarmos.

Q. Of what country was he a citizen?

A. He was a Greek citizen.

Q. Did he ever become a citizen of the United States?

A. No, he stayed here 13 years but he was not a citizen.

Q. When was he in the United States?

A. From 1911 to 1934 in San Francisco and Vallejo.

Q. He came after you were born?

[fol. 21] A. Just after.

Q. But he never became a citizen?

A. No.

Q. Did your mother ever come to the United States?

A. No, never.

Q. What was her name?

A. Anna.

Q. Where was she born?

A. In Psilithrias, Greece.

Q. Did she ever become a citizen of the United States?

A. No.

Q. Are your parents both living?

A. No, both have passed away.

Q. Do you have any friends or relatives in the United States?

A. Yes, I got many.

Q. What relatives do you have in the United States?

A. My brother, Paul Dessalermos, Miami.

Q. Is he a citizen of the United States?

A. Yes, since 1924.

Q. Do you have any other brothers or sisters?

A. No, just one.

Q. Any brothers or sisters in Greece?

A. No, I got close relatives in Port Angeles.

Q. Are you married or single?

A. Single.

Q. Have you ever been registered under the Alien Registration Act of 1940?

A. No.

Q. Did you ever know that aliens were supposed to register and be fingerprinted in the United States?

A. I knew.

[fol. 22] Q. Why did you not present yourself and be registered and fingerprinted?

A. I sent a card. I see in the newspaper every alien must send a card to the Immigration office—to Washington—and I take one card and I mail it to Washington in 1952. They asked me for my registration number. I write down no registration number. The whole trouble was they sent me a letter to fill out. They ask some questions. I went to my lawyer. They say you open the business, you have to go through now. He says come the next day so I went over there. They wrote the paper the Immigration office sent me. All right, he say, we will ask for another. The lawyer's girl brought the letter. I said I go to the postoffice (sic). I didn't have any answer and next year the local Immigration man asked me to come to his office and don't be scared and we will see what is going in your case but I know I have to be deported and I run.

Q. You say you made out this card in 1952? In January 1952?

A. Yes.

Q. Where were you living at that time?

A. I was living in Miami, 131—24 Road with my brother.

Q. You saw this lawyer then about when?

A. I had the letter February 1952, I think.

Q. And when did you leave Miami?

A. Next year exactly 13 months later.

Q. What date?

A. 1953, the 4th day of February.

Q. Did you make up an address card at the post office in January 1953?

A. No, sir, not any more.

Q. Why not?

[fol. 23] A. Because I was scared they would catch me and deport me.

Q. You say that you then received a letter from the Immigration in February?

A. In February 1952 I had a letter.

Q. But not in February 1953?

A. Just a minute—in February 1953 the next year.

Q. But you didn't go to the Immigration office?

A. I don't go.

Q. You ran off from Miami instead?

A. Yes.

Q. Where did you go?

A. To Port Angeles.

Q. How long have you been in Port Angeles?

A. Ever since.

Q. In 1954 did you go to the post office and register as required by law?

A. No.

Q. Do you know that you were required to go to the post office and register?

A. Just—I did.

Q. Why did you not go and do what the law said you should do?

A. I was waiting—something might happen—they leave me stay here—I would like to stay here.

Q. You didn't go in 1954 because you were afraid the Immigration would catch you?

A. Yes.

Q. In 1952 you turned in a card?

A. Yes.

Q. In 1953 and 1954 you did not?

A. Yes.

Q. And the reason you did not was because you were afraid the Immigration would catch up with you and deport you—am I stating that correctly?

[fol. 24] A. Yes, that's right.

Q. In other words, to make sure that I have this correctly, you knew the law required that you do this registration in 1953 and 1954 but you did not do it because you were afraid you would be apprehended?

A. That's the truth even if it is against me.

Q. You understood the question?

A. Yes.

Q. The only thing I can figure out from this is that you wilfully failed to send in these reports, that you didn't send them in for fear that you would be apprehended. That was wilful on your part?

A. I didn't send them in.

Q. On purpose?

A. Sure.

Q. On the basis of the evidence adduced so far in this hearing I now lodge the additional charge upon which I find that you are subject to deportation under section 241 (a)(5) of the Immigration and Nationality Act in that you failed to furnish notification of your address or other information in compliance with the provisions of section 265 and you have not established that such failure was reasonably excusable and was not wilful. Do you understand this charge?

A. Yes.

Q. Do you desire Mr. Heiman to represent you on this charge also?

A. Yes.

Q. Do you desire any additional time to prepare a defense on this charge.

By Counsel:

I think I would prefer additional time.

[fol. 25] Special Inquiry Officer to Counsel:

Q. How much additional time would you desire?

A. Well, what would your convenience be with reference to it?

(20) Is spouse employed? .... (Yes) ([illegible] [illegible]employed, give salary and place of em[illegible] ....

(21) For the last 10 years I have resided as follows (Set forth the information for the period you have resided in the United States if less than 10 years):*

Street and Number—City or Town—State	From—		To—	
	Month	Year	Month	Year
112 SW 10th Ave., Miami, Florida	March	47	May	50
Broadway & 87th St., New York, N.Y.	May	50	June	50
137th & Amsterdam Ave., 5th floor, NY., NY	June	50	Dec.	50
131 SW 24th Road, Miami, Florida	Dec.	50	Feb.	52
68th SW 21st Road, Miami, Florida	Feb.	52	Feb.	53
217 West 4th St., Port Angeles, Wash.	Feb.	53	March	54
413 West 2nd St., Port Angeles, Wash.	March	54	Present	date

(22) During my residence at the places in the United States named above I was employed by the following-named persons or firms:*

Full Name of Employer	Earnings Per Week (Approximately)	Type of Work Performed	From—		To—	
			Month	Year	Month	Year
Biscayne Bar & Restaurant Miami, Florida (Paul Dessalernos & Jerry Anninos)	$40.	Cashier & Allround man	6 & 12	48 50	5 1	50 53
Peninsula Plywood Corp. (Mr. Enar Erickson, General Manager) Port Angeles, Wash.	$80.	Woodworker	5	53	Present date	

(23) If self-employed, describe nature of business, name under which business is conducted, and net income derived therefrom ....

am not
(24) I ~~(am/am not)~~ married. The name of my wife or husband is ....
We were married on .... (Month) (Day) (Year) at .... (City or town) (State)

Full Name of Employer	Earnings Per Week (Approximately)	Type of Work Performed	From—		To—	
Biscayne Bar & Restaurant Miami, Florida (Paul Dessalernos & Jerry Anninos)	$40.	Cashier & Allround man	6 & 12	48 50	5 1	50 53
Peninsula Plywood Corp. (Mr. Enar Erickson, General Manager) Port Angeles, Wash.	$80.	Woodworker	5	53	Present date	

(23) If self-employed, describe nature of business, name under which business is conducted, and net income derived therefrom ....

am not
(24) I (am/am not) married. The name of my wife or husband is ....
We were married on .... (Month) (Day) (Year) at .... (City or town) (State)

(25) She or he was born at .... (City or town) (State or country)
on .... (Month) (Day) (Year), arrived in the United States at .... (City or town)
on .... (Month) (Day) (Year), for permanent residence, and now resides at .... (City or town)
.... (State or country); was .... naturalized on .... (Month) (Day) (Year)
at ....

(26) I have not (Have) (Have not) been previously married. (If previously married, give facts relative to name of spouse, and manner and date of termination of each such marriage) ....

(27) My spouse .... (Has) (Has not) been previously married. (If spouse previously married, give facts relative to name of spouse and manner and date of termination of each such marriage) ....

*Use a separate sheet for additional entries.

[illegible]

Q. Would 2 weeks be sufficient?

A. There is a possibility of me being in San Francisco. I would like this week better—any time during the week starting the 8th.

Q. Shall we make it 10 a.m., on the 10th?

A. Three weeks would be better.

Q. That would be 1 p.m., August 10, 1954?

A. Yes.

Special Inquiry Officer to Respondent:

Q. What is the state of your finances, Mr. Dessalermos?

A. Right now I got in the bank $1,500.

Q. Do you own any property?

A. I have a $500 bond—about $200 sporting goods.

Q. Do you own any real estate?

A. No.

Q. Do you have any one in the United States dependent upon you for support?

A. No.

Q. I see that you have an application for suspension of deportation under section 244 of the Immigration and Nationality Act prepared. Do you desire to make application for suspension of deportation at this time?

By Counsel:

Now, I desire at this time to ask for a continuance until August 10 at 1:00 p.m. in order to prepare my application for suspension and consideration of the lodged charge and further defense.

[fol. 26] By Special Inquiry Officer:

The hearing in this matter will now be continued until August 10 at 1:00 p.m.

I certify the foregoing to be a true and correct transcript of my shorthand notes.

Marie Mielke, Stenographer, Bk 868.

ATTACHMENT TO ANSWER

Form I-200

United States Department of Justice.
Immigration and Naturalization Service.
(Rev. 12-24-52)

Warrant.
For Arrest of Alien.

United States of America.
Department of Justice.

Immigration and Naturalization Service.

File No. 1200-54817

No. E-1 48 768

To Officer in Charge, Immigration and Naturalization Service, Port Angeles, Washington

Or to any officer in the service of the United States Immigration and Naturalization Service:

Whereas, from evidence submitted to me, it appears that the alien Gerasimos Desalernos, alias Jery Desalernos, alias Gerys Dessalernos who entered this country at Philadelphia, Pennsylvania, on the 13th day of March, 1947, [fol. 27] has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: Section 241(a)(9) of the Immigration and Nationality Act, in that, after admission to the United States as a non-immigrant, to wit, a seaman, under section 3(5) of the Immigration Act of 1924, he failed to comply with the conditions of such status.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1954."

For so doing, this shall be your sufficient warrant. Witness my hand and seal this 4th day of June, 1954.

/s/ John P. Boyd, District Director, Seattle District.
(Seal)

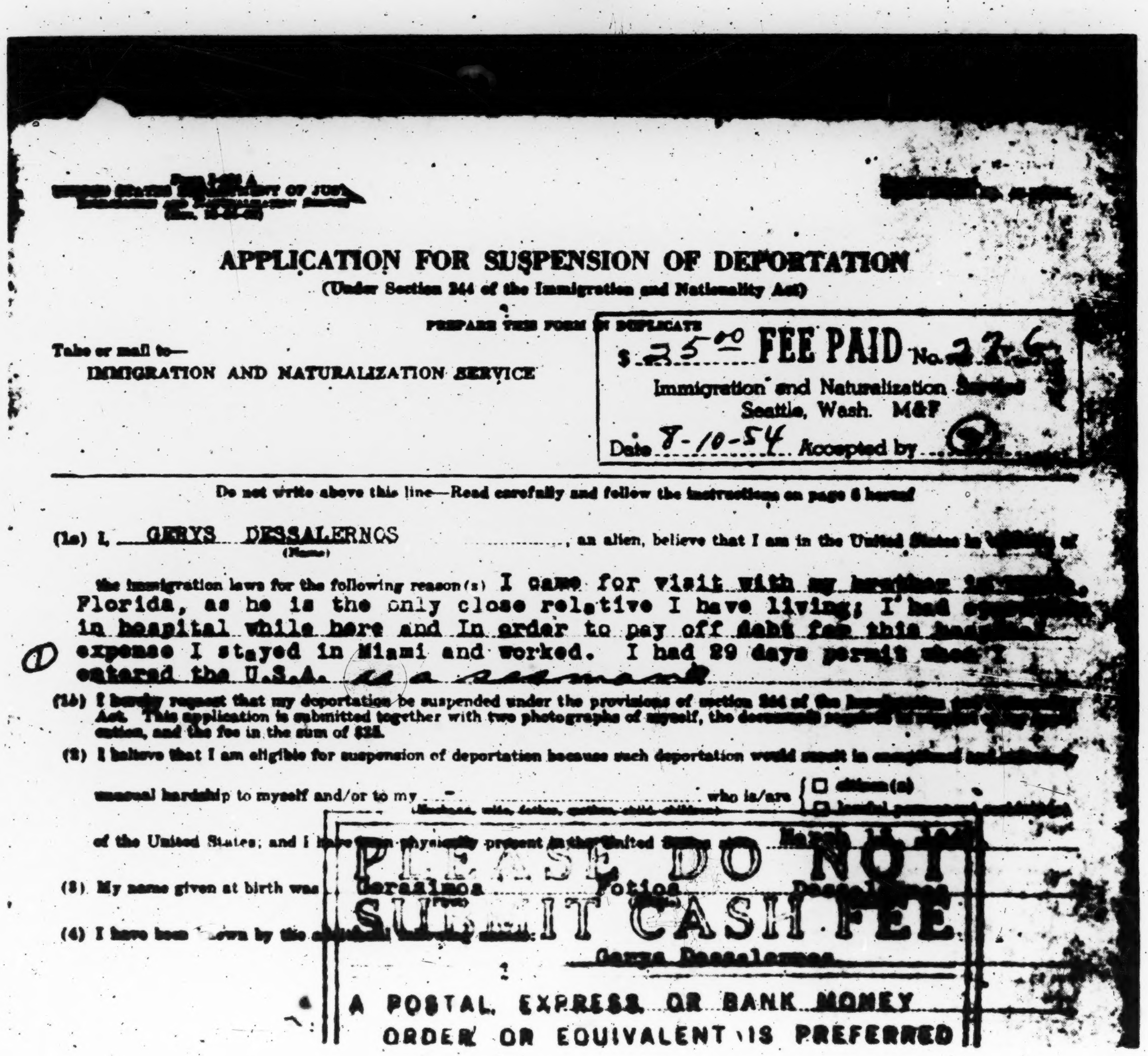
Received I & N Service Spokane, Wash. 1954 Jun 10 AM 10:10.

Office at Seattle, Washington
Date June 18 1954

[fol. 28] Warrant for Arrest of Gerasimos Desalernos served by me at Seattle, Washington, on June 28, 1954, at 11:00 AM Alien was then informed as to cause of arrest, the conditions of release, advised as to right of counsel and furnished with a copy of this warrant.

/s/ Gordon F. Davidson (Signature of Officer)
Investigator (Title)

Jun 15 1954 Received IMM & NATZ Service Port Angeles.



Form [illegible]
UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
(Rev. [illegible])

APPLICATION FOR SUSPENSION OF DEPORTATION

(Under Section 244 of the Immigration and Nationality Act)

PREPARE THIS FORM IN DUPLICATE

Take or mail to—
IMMIGRATION AND NATURALIZATION SERVICE

$ 25.00 FEE PAID No. 22[illegible]
Immigration and Naturalization Service
Seattle, Wash. M&F
Date 8-10-54 Accepted by

Do not write above this line—Read carefully and follow the instructions on page 6 hereof

(1a) I, GERYS DESSALERNOS (Name), an alien, believe that I am in the United States in violation of the immigration laws for the following reason(s) I came for visit with my brother in [illegible], Florida, as he is the only close relative I have living; I had [illegible] in hospital while here and in order to pay off debt for this hospital expense I stayed in Miami and worked. I had 29 days permit when I entered the U.S. as a seaman ①

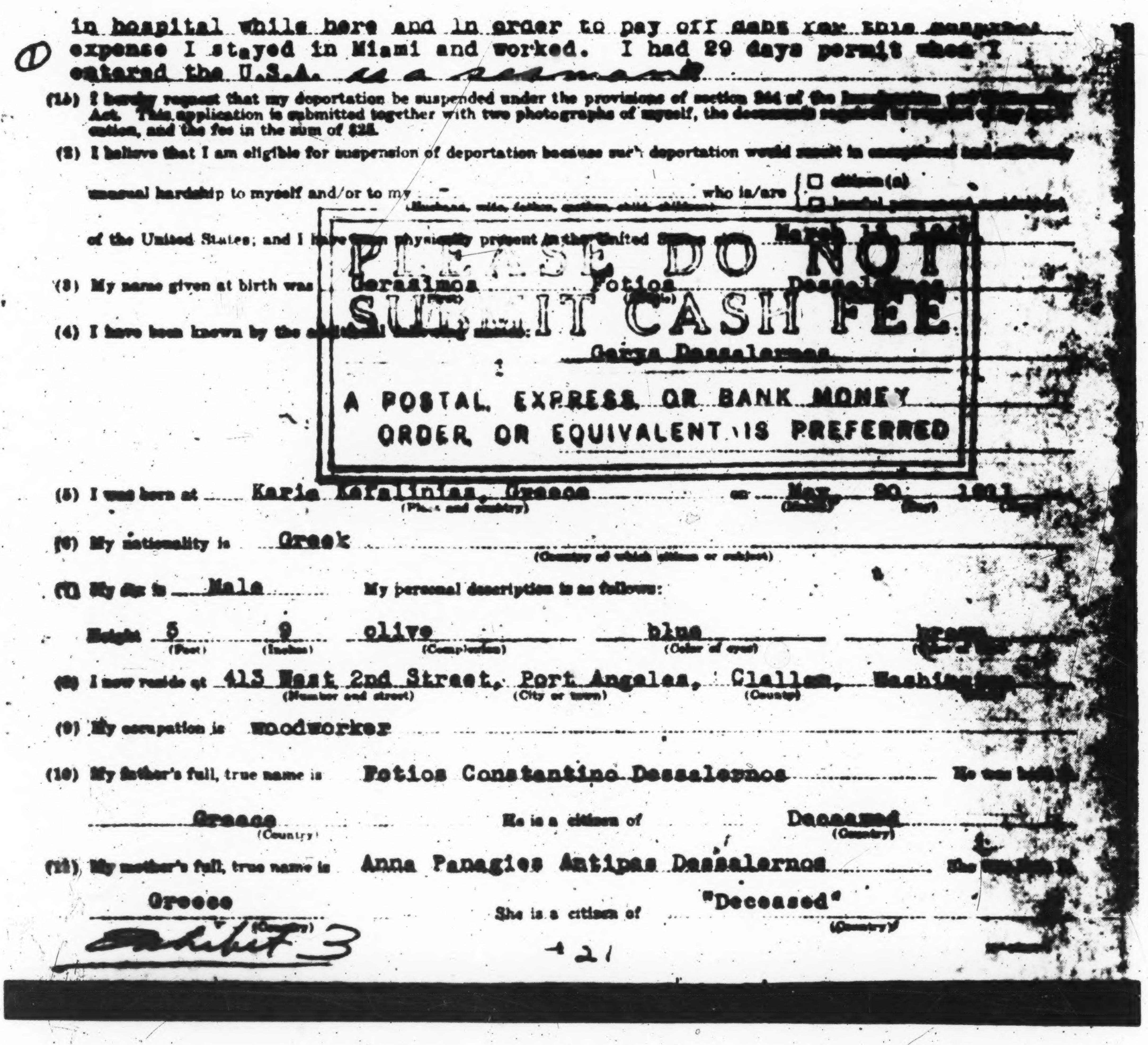
(1b) I hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. This application is submitted together with two photographs of myself, the documents required in support of my application, and the fee in the sum of $25.

(2) I believe that I am eligible for suspension of deportation because such deportation would result in exceptional and extremely unusual hardship to myself and/or to my - (Husband, wife, father, mother, child, children) who is/are ☐ citizen(s) ☐ lawful permanent resident(s) of the United States; and I have been physically present in the United States since March [illegible]

(3) My name given at birth was Gerasimos (First) Fotios Dessalernos

(4) I have been known by the following names:
Gerys Dessalernos

PLEASE DO NOT SUBMIT CASH FEE
A POSTAL, EXPRESS OR BANK MONEY ORDER OR EQUIVALENT IS PREFERRED



in hospital while here and in order to pay off debt for this hospital expense I stayed in Miami and worked. I had 29 days permit when I entered the U.S. as a seaman ①

(1b) I hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. This application is submitted together with two photographs of myself, the documents required in support of my application, and the fee in the sum of $25.

(2) I believe that I am eligible for suspension of deportation because such deportation would result in exceptional and extremely unusual hardship to myself and/or to my - (Husband, wife, father, mother, child, children) who is/are ☐ citizen(s) ☐ lawful permanent resident(s) of the United States; and I have been physically present in the United States since March [illegible]

(3) My name given at birth was Gerasimos (First) Fotios Dessalernos

(4) I have been known by the following names:
Gerys Dessalernos

PLEASE DO NOT SUBMIT CASH FEE
A POSTAL, EXPRESS OR BANK MONEY ORDER OR EQUIVALENT IS PREFERRED

(5) I was born at Karia Kefalinias, Greece (Place and country) on May (Month) 20 (Day) [illegible] (Year)

(6) My nationality is Greek (Country of which citizen or subject)

(7) My sex is Male My personal description is as follows:

Height 5 (Feet) 9 (Inches) olive (Complexion) blue (Color of eyes) brown (Color of hair)

(8) I now reside at 413 West 2nd Street, (Number and street) Port Angeles, (City or town) Clallam, (County) Washington

(9) My occupation is woodworker

(10) My father's full, true name is Fotios Constantino Dessalernos He was born in
Greece (Country) He is a citizen of Deceased (Country)

(11) My mother's full, true name is Anna Panagies Antipas Dessalernos She was born in
Greece (Country) She is a citizen of "Deceased" (Country)

Exhibit 3

4 21

QUESTIONS 12 AND 13 RELATE TO YOUR FIRST ENTRY TO THE UNITED STATES

(If you have entered the United States on only one occasion, it will not be necessary to answer questions 12 and 13)

(12) I first entered the United States under the name of ______ (First) (Middle) (Last)

on ______ (Month) (Day) (Year) at the port of ______ (Seaport or land border port) on the

vessel ______ (Name of vessel) (If name of conveyance was other than by vessel, describe such conveyance)

I was coming to remain ______ (State whether temporarily or permanently)

(13) I ______ (Was) (Was not) inspected and admitted by an immigrant inspector.

(If entry occurred at other than a regular seaport or land border port, describe the circumstances of entry (including date) as accurately as possible, naming the State in which, and the city or town at or near which you entered)

QUESTIONS 14 AND 15 RELATE TO YOUR LAST ENTRY TO THE UNITED STATES

(14) I last entered the United States under the name of Gerys Dessalernos (First) (Middle) (Last)

② on March 11, 1947 (Month) (Day) (Year) at the port of Philadelphia (Seaport or land border port) on the

vessel Aristocr[illegible] (Name of vessel) (If name of conveyance was other than by vessel, describe such conveyance)

(15) I was admitted as a seaman (Insert visitor, seaman, transient, student, permanent resident, or other)

for period of time to expire on 29 days from date of entry (Insert date of period for which admitted) My last extension of stay in the

United States expired on 29 days from date of entry (Date)

(If entry occurred at other than a regular seaport or land border port, describe the circumstances of entry (including date) as accurately as possible, naming the State in which, and the city or town at or near which you entered)

(16) Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates:

DEPARTED		RETURNED		DEPORTED AND REMOVED (Answer Yes or No)
Port	Date (Year—Month—Day)	Port	Date (Year—Month—Day)	

vessel Aristocr[illegible] (Name of vessel) (If name of conveyance was other than by vessel, describe such conveyance)

(15) I was admitted as a seaman (Insert visitor, seaman, transient, student, permanent resident, or other)

for period of time to expire on 29 days from date of entry (Insert date of period for which admitted) My last extension of stay in the

United States expired on 29 days from date of entry (Date)

(If entry occurred at other than a regular seaport or land border port, describe the circumstances of entry (including date) as accurately as possible, naming the State in which, and the city or town at or near which you entered)

(16) Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates:

DEPARTED		RETURNED		DEPORTED AND REMOVED (Answer Yes or No)
Port	Date (Year—Month—Day)	Port	Date (Year—Month—Day)	

If you have never departed from the United States since your original date of entry, insert "No departures" in space below.

No departures

(17) I (have) (have not) been served with a final order of deportation issued pursuant to the Immigration and Nationality Act

have not

(18) My assets consist of the following:

Cash, including amount in bank	$ 1750.00 ~~2000.00~~	
③ Bonds (purchase value)	$ 500.00	
Other . . . Sport equip.	$ 200.00	Total $ 2450.00 ~~[illegible]~~

(19) The assets of my spouse consist of the following:

Cash, including amount in bank	$	
War bonds (purchase value)	$	
Other	$	Total $

✓attachment to answer

Form I-480-A
U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

NAME Gerasimos
DESALKRNOS, Gera..sos

PORT OF ENTRY Phila, Pa.
CREW LIST NO 2
LINE NO 3

DATE Mar.11,1947.
S. S. S.S."ARISTOCRATIS"
LINE -*-

LICENSE NO. -
CREW LIST ..D Hamilton, Bermuda, Mar 5,1947.

VESSEL OR AIRCRAFT ARRIVED FROM St.Nazaire, France. 2/13/47

AGE 36
SEX M.
CITIZEN OF Greece
RACE Greek
ABLE TO read Yes

MEMBER OF CREW LAST PRECEDING VOYAGE TO U S No first trip.

POSITION Baker.
LENGTH OF SERVICE 11 Years

SHIPPED OR ENGAGED WHEN 2/12/47.
WHERE St.Nazaire,
WHETHER TO BE PAID OFF OR DISCHARGED AT PORT OF ARRIVAL Yes

HEIGHT 5'8"
WEIGHT 160
PHYSICAL MARKS OR DISEASE Nil

HEAD TAX PAID -
RECORD OF LEGAL ADMISSION FOR PERMANENT -

ADMITTED SEC 3-(5).
ACT 1924.
FOR PERIOD OF Time vessel remains in US. ports not to Exceed 29 DAYS

REPORTED ON FORM 1489 (OLD 689) DATED Phila, Pa. 1947.

AS DISCHARGED

REMARKS -*- Local Agent Texas Transport & Termi Co.

CERTIFICATE OF ADMISSION OF ALIEN SEAMAN OR AIRMAN

1200-54817-Port Angeles,Washington.

I HEREBY CERTIFY that this is a correct record and statement of facts relative to the arrival in the United States of the alien named herein.

James J. Manning
SIGNATURE

June 7, 1954.
DATE

Clerk
TITLE

11m

(28) I have no children whose names, ages, places of birth, places of residence, assets, and earnings are

Name	Age	Place of Birth	Now Residing at—	Assets	

As to those children who were not born in the United States, give date and place of arrival in the United States including full details as to the manner and terms of their admission to this country

(29) I did not (Did) (Did not) register under the Alien Registration Act of 1940, or section 262 of the Immigration and Nationality Act, or in connection with my application for a visa. The number of my Alien Registration Receipt Card is No.

④ I have (Have) (Have not) submitted an address report as required by the amendment to the Alien Registration Act effective September 23, 1950, and section 265, Immigration and Nationality Act. in 1952 only.

(30) I have not (Have) (Have not) been the recipient of public or private relief or assistance.

If you have, give full details including date, place, and amount received

(31) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft laws? Yes ☐ No ☒ If "Yes," give date Were you ever exempted from service because of conscientious objections ☐ alienage ☐ other ☐

(32) If you ever served in the Armed Forces of the United States, state branch (Army, Navy, etc.)

Date of Entry Date of discharge Type of discharge (Honorable, dishonorable, etc.)

Reason for discharge

or in connection with my application for a visa. The number of my Alien Registration Receipt Card is No.

④ I have (Have) (Have not) submitted an address report as required by the amendment to the Alien Registration Act effective September 23, 1950, and section 265, Immigration and Nationality Act. in 1952 only.

(30) I have not (Have) (Have not) been the recipient of public or private relief or assistance.

If you have, give full details including date, place, and amount received

(31) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft laws? Yes ☐ No ☒ If "Yes," give date Were you ever exempted from service because of conscientious objections ☐ alienage ☐ other ☐

(32) If you ever served in the Armed Forces of the United States, state branch (Army, Navy, etc.)

Date of Entry Date of discharge Type of discharge (Honorable, dishonorable, etc.)

Reason for discharge

(33) Have you ever deserted from the military or naval forces of the United States while this country was at war? Yes ☐ No ☒
Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? Yes ☐ No ☒

(34) I am (Am) (Am not) attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of this country.

(35) List all organizations, societies, clubs, and associations, past or present, in which you have held membership, whether in the United States or a foreign country, and the periods and places of such membership:

Seaman's Union of Per[illegible] Greece. 1946
Woodworker's Union, Port Angeles, Washington, since June 1953
Order of Ahepa, Port Angeles, Washington Chapter since Jan., 19[illegible]
Salmon Club, Port Angeles, Washington, since April, 1953.

(36) I have not (Have) (Have never) (either in the United States or any other country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance.

If answer is in the affirmative in any particular, give complete information in the space immediately following

(37) To the best of my knowledge a[illegible] I am not a member of any of the follow[illegible]es of individuals deportable under the immigration laws except as [illegible]th in item (1a) above: Persons convicted [illegible] admitting the commission of a crime involving moral turpitude; persons who willfully failed to give the Attorney General written notice of current address; persons convicted of filing an application for registration as an alien containing false statements or for committing a fraud in connection with such registration; persons convicted of violating or conspiracy to violate any provision of the Act entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes" approved June 8, 1938, as amended; persons convicted of fraud and misuse of visas and permits or making false statements in documents required by the immigration laws or regulations under section 1546 of title 18 of the United States Code; persons who entered the United States to engage in activities which would be prejudicial to the public interest or would endanger the safety or welfare of the United States; anarchists, persons who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches opposition to all organized government; persons who are members of or are affiliated with the Communist or any totalitarian party of the United States or any State thereof, or of any foreign state or any political or geographical subdivision thereof; or persons who are deportable by reason of any of the activity prescribed by the provisions of the Act of October 16, 1918, as amended, or section 241 (a) (6) of the Immigration and Nationality Act; narcotic drug addicts; persons convicted of violating the narcotic laws; prostitutes, or persons connected with the business of prostitution; persons convicted of possession or carrying an automatic weapon or sawed-off shotgun; persons convicted of violating the provisions of title I of the Alien Registration Act of 1940 of interfering with the military or naval forces of the United States, or of subversive activities against any government in the United States; persons who are undesirable residents by reason of conviction of one of the offenses enumerated in section 241 (a) (17); persons who have unlawfully reentered the United States after having previously departed or been deported pursuant to an order of deportation. If within one of the foregoing classes, explain fully:

(38) I can return to my country of ☒ Birth ☒ Nationality ☒ Last Residence without fear of physical persecution. If unable
(Check the appropriate block or blocks)
to return to any of these countries, give reasons

(39) I would be able to arrange a trip outside the United States to obtain an immigration visa. If not, explain:
(Would) (Would not)

persons who are undesirable residents by reason of conviction of one of the offenses enumerated in section 241 (a) (17); persons who have unlawfully reentered the United States after having previously departed or been deported pursuant to an order of deportation. If within one of the foregoing classes, explain fully:

(38) I can return to my country of ☒ Birth ☒ Nationality ☒ Last Residence without fear of physical persecution. If unable
(Check the appropriate block or blocks)
to return to any of these countries, give reasons

(39) I would be able to arrange a trip outside the United States to obtain an immigration visa. If not, explain:
(Would) (Would not)

(40) Give names of close relatives in the United States, other than parent, minor child, or spouse
Brother - Paul Dessalernos; Cousins - Pete, Jerry, Angelo, Athena, and Nick Capos; Effie Capos Colompos; Chris, Harry, Speros Dessalernos; and Uncle - John Capos.

IF THIS APPLICATION IS BASED ON EXCEPTIONAL AND EXTREMELY UNUSUAL HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 41 TO 45 MUST BE ANSWERED.

(41) As to such parent who is not a citizen of the United States, give date and place of arrival in the United States including full details as to manner and terms of admission to this country

(42) Is father employed? .... If employed, give salary and place of employment
(Yes) (No)

(43) Is mother employed? .... If employed, give salary and place of employment
(Yes) (No)

(44) Assets of father consist of the following:

Cash, including amount in bank	$
War bonds (purchase value)	$
Other	$
	Total $

+25

16—69881-1

[redacted]

(45) Assets or amount [illegible] of the following:

Cash, including amount in bank . . . . $..........

War bonds (purchase value) . . . . $..........

Other . . . . $..........

Total $..........

(46) The following certificates or other documents are attached herewith as a part of this application:

Nature of Document

⑤ Letter Reference [illegible] Amminos

Seaman book

Affidavit of good record from Pros. Attorney

Affidavit from employer in Athens (Tsitas Gerakakis)

Affidavit of Paul [illegible]

Police Record, Port Angeles, Wn.

" " [illegible], Fla.

Employment Record

Social Security book with photograph from Greece

Character letter from Pastor of Gr. Orthodox Church in Florida

Pen-Ply Fed Credit Union pass book

(Sign here) X [illegible]

(Signature of [illegible] agent or guardian)

(APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE A SPECIAL INQUIRY OFFICER FOR HEARING OR FURTHER HEARING IN DEPORTATION PROCEEDINGS.)

I, ..., do swear (affirm) that I know the contents of this application subscribed by me, that the same including the documents appended hereto are true to the best of my knowledge, and that corrections numbered (1) to (5) were made by me or at my request, and that this application was signed by me with my full, true name: So Help Me God.

X [illegible]

(Complete and true signature of applicant)

Subscribed and sworn to before me by the above-named applicant at Seattle, Wash.

this 10 day of August, 1954

George S. Daily

Special Inquiry Officer

(Title of officer)

INSTRUCTIONS TO THE APPLICANT

1. DEPORTABILITY.—Your statement in question (1e) that you believe you are in the United States in violation of the immigration laws is not binding with respect to your deportability.

2. PREPARATION OF APPLICATION.—A separate application must be executed for each person [illegible]

I, ..., do swear (affirm) that I know the contents of this application subscribed by me, that the same including the documents appended hereto are true to the best of my knowledge, and that corrections numbered (1) to (5) were made by me or at my request, and that this application was signed by me with my full, true name: So Help Me God.

X [illegible]

(Complete and true signature of applicant)

Subscribed and sworn to before me by the above-named applicant at Seattle, Wash.

this 10 day of August, 1954

George S. Daily

Special Inquiry Officer

(Title of officer)

INSTRUCTIONS TO THE APPLICANT

1. DEPORTABILITY.—Your statement in question (1e) that you believe you are in the United States in violation of the immigration laws is not binding with respect to your deportability.

2. PREPARATION OF APPLICATION.—A separate application must be executed for each person applying for suspension of deportation. However, all applications from a family unit may be mailed together and may be supported by the same documentary evidence, if practicable. An application in behalf of a child under 14 years of age shall be executed by the parent or guardian.

3. FEE.—A fee of $25 must accompany each application. All remittances should be made payable to "Treasurer of the United States" except that in Guam they should be made payable to "Treasurer of Guam" and in the Virgin Islands to "Commissioner of Finance, Virgin Islands."

4. DOCUMENTS.—In support of your application you may submit one photostatic, photographic, or typewritten copy of documentary evidence to prove that you are eligible for suspension of deportation. The originals of such documentary evidence must be brought with you when you are notified to appear for examination on this application. In addition you should submit any temporary entry permit (Form 257a or I-94) issued at the time of your entry.

You must submit official certifications to establish the relationship to those you claim would suffer exceptional and extremely unusual hardship by your deportation, and if such persons are citizens of the United States, evidence of their citizenship. These documents usually consist of birth, marriage, divorce and death records to establish your relationship. Do not photostat or photograph a naturalization certificate but bring it with you at the time of hearing.

Documentary evidence of your residence in the United States must be submitted. This may consist of bank books, leases, deeds, licenses, receipts, letters, birth records, church records, school records, employment records, affidavits, etc. The period of residence required varies with the time of entry and ground of deportation. However, the minimum under those subsections of section 244 presently effective is 7 years.

You must prove that you have been a person of good moral character during the entire period of physical presence in the United States required for eligibility for suspension of deportation, and must submit police records covering such period. You must also submit the affidavits of two witnesses, preferably citizens of the United States, and if employed, one from your employer, who can vouch for your good moral character during such period.

5. PHOTOGRAPHS.—You must submit with this application two photographs of yourself taken within 30 days of the date of this application. These photographs must be 2 x 2 inches in size, and the distance from top of head to point of chin should be approximately 1¼ inches. They must not be pasted on cards or mounted in any way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. [illegible] will not be accepted. All of these photographs must be signed by you on the margin and not on the face or the clothing.

6. PENALTIES.—Your attention is called to section 1546 of title 18, United States Code, which provides that whoever knowingly makes under oath any false statements in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, shall, upon conviction thereof, be fined not more than $2,000 or imprisoned for not more than 5 years, or both. Your answers to [illegible] questions in this form may be used as [illegible] any [illegible] to obtain [illegible] place through [illegible] in the United States. False answers [illegible] of the questions may result in the denial of your application.

[redacted]

[fol. 36] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ANTHONY S. BATTAGLIA—Filed May 10, 1955

Anthony S. Battaglia, at Miami, Dade County, Florida, being first duly sworn, deposes and says:

1. That he is an assistant United States Attorney in and for the Southern District of Florida, and acting upon and in behalf of the United States of America.

2. Affiant further says that to the best of his information and belief, plaintiff herein, a single man, is a native and citizen of Greece, and has resided continuously in the United States since his admission at Philadelphia, Pennsylvania, on March 11, 1947.

3. Affiant further says that the plaintiff had never applied for or been granted an extension of this temporary period of admission and has never been admitted to the United States for permanent residence. The record which is attached and made a part of the answer in the above captioned matter reflects that the plaintiff failed to furnish notification of his change of address during January 1953 and January 1954 or other information in compliance with the provisions of Section 265 of the Immigration and Nationality Act of 1952.

4. Plaintiff did not establish to the satisfaction of the Attorney General that his failure to furnish the afore-[fol. 37] mentioned information was reasonably excusable or was not willful.

The record clearly shows that plaintiff is subject to deportation under the provisions of Section 241(a)(5) of the act of 1952.

5. Defendant further says that there is a genuine issue of fact, to-wit: the failure of the plaintiff to furnish notification of his address for the year 1953 and January 1954 as provided for in Section 265 of the Immigration and Nationality Act of 1952 will render the alien deportable under Section 241(a)(5) of said act, 1. If the plaintiff's failure to notify the Attorney General as required by the aforesaid act was intentional, 2. Was there sufficient justi-

fication for the plaintiff's failure to notify the Attorney General as required by the aforesaid act, and 3. Was the failure by the plaintiff to notify the Attorney General as required by the aforesaid act accidental or involuntary.

Affiant states these are genuine issues of fact which are to be determined from the deportation record which has been attached to and made part of the Answer filed in the above captioned cause.

6. Affiant further says that plaintiff's application for suspension of deportation under the Immigration and Nationality Act of 1952 must be considered under Section 241(a)(5).

7. Affiant further says that the motion for summary judgment should be dismissed.

[fol. 38] Further affiant sayeth not.

/s/ Anthony S. Battaglia, Assistant U. S. Attorney.

Sworn to and subscribed to before me this 9th day of May, 1955.

/s/ Anna R. Alexander, Notary Public, State of Florida at large.

(Notary Seal.)

My commission expires March 29, 1958.
Bonded by American Surety Co. of N. Y.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

[Title omitted]

STIPULATION OF COUNSEL—Filed January 11, 1956

It Is Hereby Stipulated and Agreed by and between counsel for the respective parties hereto that, since it is apparent that the above-styled case may be resolved on an administrative basis, this case should be removed from [fol. 39] the trial docket and set over until the next trial calendar, trial having been set for January 9, 1956, at 9:30 A.M.

Dated at Miami, Florida, this 4th day of January, A. D. 1956.

Walters, Moore & Costanzo, Attorneys for Plaintiff, by /s/ David W. Walters.

James L. Guilmartin, United States Attorney, by /s/ E. David Rosen.

IN UNITED STATES DISTRICT COURT

ORDER REMOVING CASE FROM TRIAL DOCKET—January 9, 1956

This Cause having come on for hearing upon stipulation by and between counsel for the respective parties hereto that the above-styled cause be removed from the trial docket and set over until the net trial calendar, it seeming apparent that the matter may be resolved on an administrative basis; and the Court being fully advised in the premises, it is

Ordered that the above case be removed from the present trial docket and set over until the next trial calendar.

[fol. 40] Done and Ordered in Chambers at Miami, Florida, this 9th day of January, A. D. 1956.

Emett C. Choate, United States District Judge.

IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1—Filed July 9, 1956

United States Department of Justice.
Immigration and Naturalization Service.
Seattle

September 1, 1954

File: 1200-54817

In re: Gerys Dessalernos

In Deportation Proceedings.

In Behalf of Respondent:
Jeffrey Heiman
Attorney at Law
1411 4th Avenue Bldg.,
Seattle, Washington

Charges:
Warrant: I & N Act—Seaman, failed to comply with conditions of admission.

Lodged: I & N Act—Failure to furnish notification of address and other information.

Detention Status:
Released on bond.

[fol. 41] Application:
Suspension of deportation.

Warrant of Arrest Served:
June 28, 1954.

Discussion:

This record relates to a 43 year old single male, a native and citizen of Greece, who last entered the United States at Philadelphia, Pennsylvania, on March 11, 1947 on the SS Aristocratis. This entry has been verified. At the time of his last entry, respondent was examined and admitted as a seaman under Section 3(5) of the Immigration Act of 1924, for 29 days, by an immigration officer. Respondent was discharged from the vessel on March 14, 1947 and has remained continuously in the United States since. He has never applied for or obtained any extension of his stay in the United States from an immigration officer. Respondent testified that, at the time of his admission, it was his intention to visit a brother in Miami, Florida and then re-ship foreign. He has not departed the United States in compliance with the conditions of his admission. The charge contained in the warrant of arrest is sustained.

Respondent was questioned regarding his compliance with the provisions of Section 265 of the Immigration and Nationality Act during the months of January 1953 and January 1954. He testified that he had not submitted the registration reports required by law because he was afraid, if he did so, that he would be apprehended by the Service and deported. He testified that he knew of the requirement and had submitted a report in January 1952. This report [fol. 42] lead to inquiries from the Immigration Service and in 1953 he fled Miami, Florida, where he was living, for fear of apprehension. Respondents testimony was responsive to the questions addressed to him and was direct and unevasive. The charge was therefore lodged that respondent was deportable for failure to furnish notification of address and other information required by Section 265 and such failure was not reasonably excuseable or not wilful. Counsel requested additional time to prepare a defense on this lodged charge and the hearing was continued to a date mutually agreeable. During the course of the continued hearing respondent attempted to rationalize his failure to report and establish that his conduct was not wilful and was reasonably excuseable. On cross-examination respondent, however, reaffirmed his testimony given prior to the continuance. His testimony amply supports the conclusion that he failed to furnish notification of address for fear of apprehension. Fear of apprehension is not a reason that establishes failure to report as reasonably excuseable or not wilful (Interim Decision #438, Matter of M.). The lodged charge is sustained.

Respondent has submitted an application for suspension of deportation. The record establishes that he meets the good moral character requirement. He is single and has no one in the United States dependent upon him for support. He does not meet the requirement that his deportation result in exceptional and extremely unusual hardship to himself. While it is recognized that hardship will result, it would not be so exceptional and extremely unusual as to make his deportation unconscionable. Further, as respondent is deportable on a charge enumerated in Section 244(a) [fol. 43] (5) of the Immigration and Nationality Act, he must meet the requirement of that section for suspension of deportation. As he does not have the ten year physical presence in the United States specified by that section he is not eligible for suspension of deportation. Suspension of deportation is denied.

As respondent is deportable under one of the sections enumerated under Section 244(e) and is not eligible for suspension of deportation under Section 244(a)(5) he is not eligible for voluntary departure.

FINDINGS OF FACT.

Upon the basis of all the evidence presented, it is found:

(1) That the respondent is an alien, a native and citizen of Greece;

(2) That the respondent last entered the United States March 11, 1947 at Philadelphia, Pennsylvania;

(3) That at the time of his last entry respondent was admitted as a seaman for a period not to exceed 29 days;

(4) That the respondent has not departed the United States in accordance with the terms of his admission;

(5) That respondent failed to furnish notification of his address in January 1953 and January 1954 and such failure was not reasonably excuseable or not wilful.

[fol. 44]

CONCLUSIONS OF LAW.

Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under Section 241(a)(9) of the Immigration and Nationality Act, the respondent is deportable in that,

after admission to the United States as a non-immigrant, to wit, a seaman, under section 3(5) of the Immigration Act of 1924, he failed to comply with the conditions of such status.

(2) That under Section 241(a)(5) of the Immigration and Nationality Act, the respondent is deportable in that, he has failed to furnish notification of his address or other information in compliance with the provisions of Section 265 and has not established that such failure was reasonably excuseable or was not wilful.

ORDER:

It is ordered that the alien be deported from the United States in the manner provided by law on the charge contained in the warrant of arrest and on the lodged charge.

George S. Dailey, Special Inquiry Officer.

[fol. 45] IN UNITED STATES DISTRICT COURT

FINAL JUDGMENT—July 10, 1956

This cause having come on for trial without jury and it having been stipulated orally before the Court by the Attorney for the Plaintiff and the Assistant U. S. Attorney that there was no issue of fact to be tried by the Court and that the facts as found by the Board of Immigration Appeals and the Special Inquiry Officer during the course of the administrative proceedings, of which this case sought a review, correctly stated the true factual situation, and there having been introduced into evidence the order of the Board of Immigration Appeals and the order of the Special Inquiry Officer and the transcript of the hearing before the Special Inquiry Officer on which the latter order was based, and it having been further orally stipulated before the Court that the sole question to be decided by the Court was to wit:

Does the fact that plaintiff is admittedly statutorily ineligible for suspension of deportation under section 244 (a)(5) of the Immigration and Nationality Act (he, the plaintiff, not being able to meet the physical requirements of that section) preclude the plaintiff from presenting for consideration his application for suspension of deportation under section 244(a)(1) of said Act, it being admitted that the plaintiff fully meets the requirements of the latter section?

and the Court having heard argument of counsel, and the Court being of the opinion that the above question should be answered in the affirmative and that the plaintiff, by [fol. 46] reason of his being admittedly deportable under section 241(a)(5) of the Immigration and Nationality Act, is not entitled to consideration of his application for suspension of deportation under section 244(a)(1) of the Immigration and Nationality Act and must rely on section 244(a)(5) of said Act exclusively, and the Court being otherwise fully advised in the premises, it is upon consideration,

Ordered and Adjudged that the Board of Immigration Appeals was correct in its interpretation of the law applicable to this case, that the deportation order against the plaintiff was properly entered, and that the plaintiff is statutorily ineligible for suspension of deportation under the provisions of section 244(a).

Done and Ordered at Miami, Dade County, Florida, this 10 day of July, 1956.

George W. Whitehurst, U. S. District Judge.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed July 12, 1956

Notice Is Hereby Given that Gerys Dessalernos, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the order of the District Court of the United States for the Southern District of Florida, Miami Division, heretofore filed by [fol. 47] plaintiff, entered by said Court in this action on the 11th day of July, 1956.

/s/ David W. Walters, Attorney for Plaintiff.

(Certificate of service.)

IN UNITED STATES DISTRICT COURT

STIPULATION OF COUNSEL—Filed July 13, 1956

It Is Hereby Stipulated between David W. Walters, counsel for plaintiff, and James L. Guilmartin, United States Attorney, counsel for defendant, that during the pendency of the above-styled cause before the United States Court of Appeals for the Fifth Circuit, and until final order or appeal, the plaintiff will not be removed by the defendant from the jurisdication (sic) of the United States District Court for the Southern District of Florida, Miami Division.

Dated the 12th day of July, A. D. 1956.

/s/ David W. Walters, Attorney for Plaintiff.

James L. Guilmartin, United States Attorney, by /s/ Richard R. Booth, AUSA, Attorney for Defendant.

[fol. 48] IN UNITED STATES DISTRICT COURT

ORDER CONTINUING ORDER FOR PRELIMINARY INJUNCTION—July 12, 1956

Upon consideration of the stipulation entered into between counsel for the plaintiff and defendant, and it appearing that the deportation of the plaintiff during the pendency of the appeal would cause him to suffer irreparable damage, it is

Ordered, Adjudged and Decreed that the outstanding order for preliminary injunction dated March 1, 1955, be continued in full force and effect pending a final disposition of this cause and appeal, or until further order of this Court.

Done and Ordered in Chambers, this 12th day of July, 1956.

Emett C. Choate, Judge.

CLERK'S NOTE

As to Item 16 of the Designation, being Motion to extend time for perfection of record; said motion was filed in the United States Court of Appeals and not in this Court.

[fol. 49] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

GERYS DESSALERNOS, Miami, Florida, Appellant,

v.

JOSEPH SAVORETTI, District Director, United States Immigration and Naturalization Service, Miami, Florida, as Agent for HERBERT BROWNELL, Attorney General of the United States, Appellee.

Appeal from the United States District Court for the Southern District of Miami.

Before Hutcheson, Chief Judge, and Rives and Brown, Circuit Judges.

ORDER OF UNITED STATES COURT OF APPEALS EXTENDING TIME TO FILE RECORD IN APPELLATE COURT—September 14, 1956

By the Court:

It Is Ordered by the Court that the time for filing the transcript of record in the above entitled cause in this Court be extended for a period of thirty days from September 12, 1956.

A true copy.

Test:

John A. Feehan, Jr., Clerk, U. S. Court of Appeals, Fifth Circuit.

(Seal)

New Orleans, Louisiana, September 14, 1956.

[fol. 50] IN UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD—Filed September 18, 1956

Comes now David W. Walters, Attorney for Gerys Dessalernos, plaintiff herein, and respectfully designates the portion of the record on file in this cause in the office of the Clerk of the District Court of the United States for the Southern District of Florida, Miami Division to be transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit, and requests the Clerk of the Court to which this designation is directed to make up a transcript for such purpose, composing such transcript of the following:

1. A true copy of the complaint.

2. A true copy of motion for preliminary injunction.

3. A true copy of notice of hearing.

4. A true copy of order granting preliminary injunction.

5. A true copy of motion for summary judgment, including the attached affidavit and exhibit.

6. A true copy of notice of hearing on motion for summary judgment.

7. A true copy of the answer, including all exhibits thereto attached.

[fol. 51] 8. A true copy of affidavit in opposition to motion for summary judgment.

9. A true copy of the stipulation.

10. A true copy of the order dated January 9, 1956.

11. A true copy of the final judgment.

12. A true copy of the notice of appeal.

13. A true copy of stipulation dated July 12, 1956.

14. A true copy of order dated July 12, 1956.

15. A true copy of the Government's Exhibit "1" being a transcript of deportation proceedings in Seattle on September 1, 1954 filed in evidence.

16. A true copy of motion to extend time for perfection of record.

17. A true copy of order extending time to perfect record.

18. A true copy of designation of contents of record on appeal.

/s/ David W. Walters, Attorney for Plaintiff.

Miami, Florida, September 17, 1956.

(Certificate of mailing.)

[fol. 52] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 53] IN UNITED STATES COURT OF APPEALS

[Title omitted]

MINUTE ENTRY OF SUBMISSION—March 14, 1957

On this day this cause was called and, was taken under submission by the Court upon the record and briefs on filed (sic), on joint request of counsel.

[fol. 54] IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16340

GERYS DESSALERNOS, Appellant,

v.

JOSEPH SAVORETTI, District Director, United States Immigration and Naturalization Service, Miami, Florida, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

OPINION—April 22, 1957

Before Tuttle, Jones and Brown, Circuit Judges.

Tuttle, Circuit Judge: This is an appeal from a judgment in an action to review a determination of the Board of Immigration Appeals by which the district court held that appellant is subject to deportation and is statutorily ineligible for waiver of deportation.

[fol. 55] The undisputed facts are that appellant is an alien, a native and a citizen of Greece, who last entered the United States on March 11, 1947, as a seaman on a Certificate of Admission permitting a stay of not over 29 days; no extension has ever been applied for or granted. In 1952 appellant registered for the first and only time under the provisions of the Alien Registration Act,[1] and he has since failed to file the annual registration required by 8 U.S.C.A. §1305. The Special Inquiry Officer determined, and the Board of Immigration Appeals and the district court agreed, and appellant does not dispute, that the failure to register was willful and without reasonable excuse.

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[1] 8 U.S.C.A §1302, formerly 8 U.S.C. §452 (1946 ed.).

Appellant is thus deportable both as a nonimmigrant who has failed to comply with the conditions of that status, 8 U.S.C.A. §1251(a)(9), and as an alien who has failed to comply with the provisions of the Alien Registration Act, 8 U.S.C.A. §1251(a)(5). The only issue is whether appellant's application for suspension of deportation should be treated as falling under section 1254(a)(1) of the Title under which he could qualify for discretionary relief by the Attorney General,[2] or under section 1254(a)(5), under [fol. 56] which he cannot qualify.[3]

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[2] §244(a)(1) of the Immigration and Nationality Act of 1952, 8 U.S.C.A. §1254(a)(1), provides as follows:

> "§1254. Suspension of deportation—Adjustment of status for permanent residence; contents
>
> "(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—
>
> "(1) applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or
>
> . . . . ."

The application for suspension was filed on August 10, 1954, more than seven years after appellant's entry; the failure to register annually as required by law would apparently not automatically make him a person not "of good moral character" as that term is defined by 8 U.S.C.A. §1101(f), nor would it make him ineligible for suspension of deportation under the now repealed provisions of §19(d)

Appellant contends that since he qualifies under one category established by section 1254(a) his application for [fol. 57] suspension should be considered under that paragraph, even though he is ineligible under another category whose provisions are applicable to his situation but whose requirements he fails to meet. In particular, appellant argues that Congress, in drafting the 1952 Act, had wished to preserve the right of all aliens whose last entry had occurred before June 27, 1950, (two years prior to date of enactment of the Act) to apply for suspension of deportation under substantially the provisions and standards of the pre-1952 law, as long as they filed their application at any time before December 31, 1957 (five years after the effective date of the chapter). To support this proposition he points to the provisions of the Act, in which, as detailed below, a generally clear distinction is indeed made, in sev-

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of the Immigration Act of 1917, as amended (formerly 8 U.S.C. §155(d) (1946 ed.)), which read as follows:

> "§155. Deportation of undesirable aliens generally.
>
> . . . .
>
> "(d) The provisions of subsection (c) [permitting suspension of deportation] shall not be applicable in the case of any alien who is deportable under (1) section 137 of this title; (2) section 175 of Title 21; (3) section 156a of this title; (4) any of the provisions of so much of subsection (a) of this section as relates to criminals, prostitutes, procurers, or other immoral persons, the mentally and physically deficient, anarchists, and similar classes; or (5) subsection (b) of this section."

None of the cited exclusions include the failure of an alien to register as required by law; see footnote 6, infra.

[3] §244(a)(5) of the Act, 8 U.S.C.A. §1254(a)(5), provides in part as follows:

> "§1254. Suspension of deportation—Adjustment of status for permanent residence; contents
>
> "(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—
>
> . . . .
>
> "(5) is deportable under paragraphs (4)-(7), (11), (12), (14)-(17), or (18) of section 1251(a) of this title for an

eral paragraphs listed in the disjunctive, between those aliens who entered before and those who entered on or after June 27, 1950; in addition he refers us to the report of the Senate Judiciary Committee which first considered these provisions, which stated:

> "The subcommittee recommends that the present suspension of deportation provisions of the law be [fol. 58] abolished within 5 years and that no alien who entered the United States within a period of 2 years prior to the enactment of the proposed legislation shall be eligible under the present suspension provision of the law, as modified."[4]

and then continued with its recommendations for the altered provisions of the new law.

The Government argues, in effect, that the provisions are meant to be mutually exclusive, and that since paragraph (5) refers specifically to the situation of the appel-

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act committed or status acquired subsequent to such entry into the United States or having last entered the United States, within two years prior to, or at any time after June 27, 1952, is deportable under paragraph (2) of section 1251(a) of this title as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

Appellant of course has not been a resident of the United States for 10 years since his last failure to register in January 1954, which is an "act" that makes him liable to deportation under §1251(a)(5).

[4] "Report of the Senate Committee on the Judiciary pursuant to S.Res. 137," S.Rep. No. 1515, 81st Cong., 2nd Sess., April 20, 1950.

lant, i.e. to one who violated the Alien Registration Act, while paragraph (1) only refers generally to aliens "deportable under any law of the United States," under the usual rules of statutory construction he must be treated as a member of the "particular class" into which he falls. *Baltimore National Bank* v. *State Tax Commission of Maryland*, 297 U.S. 209, 215; 82 C.J.S., Statutes §347(b).

The question raised is unfortunately not as easily resolved as each of the parties would have it; as in many cases under this Act the courts must resort to a close study of the complex interrelation of the several provisions of both the present and the former law, both internally and, as required by the frequent crossreferences, with each other. On this particular narrow issue there appear to be no cases to guide us[5] nor has any legislative history more [fol. 59] helpful than the general language quoted above been called to our attention. To arrive at the most reasonable construction it will therefore be necessary to examine the entire background and pattern of the pertinent sections.

Prior to 1940 there was no statute under which relief from deportation could be granted, and in general such aid could only be secured by means of a private bill in Congress. By the Alien Registration Act of 1940 the Attorney General was given discretionary authority to suspend deportation of aliens not guilty of any major misbehavior, defined by excluding from the relief provision aliens who fell into any of a number of listed categories of undesirables, upon a showing of good moral character for five years and of the threat of serious economic detriment to any legally resident, close relative of the alien, unless Congress passed a concurrent resolution disapproving of such a suspension. 54 Stat. 671, 8 U.S.C. §§155(c),(d) (1946 ed.). In 1948 the provision was changed by *also* permitting the suspension of deportation of aliens not in the excluded categories upon a mere showing of seven years residence (regardless of considerations of hardship to them or to their families), but requiring that in *all* cases of suspension

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[5] See, however, the just reported district court case, Sevitt v. Del Guerico (S.D.Cal.), ___ F.Supp. ___ (25 U.S.L.W. 2449), which reaches a result contrary to ours below.

Congress pass an affirmative concurrent resolution approving the stay. 62 Stat. 1206, 8 U.S.C. §155(c) (1946 ed., Supp. 11, 1949).

The 1952 Act completely recast the former suspension provisions. Five general categories of aliens were designated by successive paragraphs of 8 U.S.C.A. §1254(a): (1) those whose "offense" did not disqualify them for [fol. 60] suspension under the former Act (referred to as §19(d) of the Immigration Act of 1917, as amended), who had entered the United States, properly or improperly, before June 27, 1950, and who prior to their application for suspension of deportation had resided here for at least seven years and had maintained a good moral character; (2) those whose deportability arises from some circumstance existing at or before their entry, but not involving any major misbehavior or improper entry (defined by excluding those aliens falling into category (4)), whose entry was subsequent to June 26, 1950, and who have maintained at least five years of residence with good moral character up to the time of application; (3) those whose situation is similar to that of category (2) except that their deportability arises from circumstances after entry; (4) those whose deportability arises either from an improper entry or from major misbehavior before entry, who entered after June 26, 1950, and who have maintained at least ten years of residence with good moral character; (5) those whose deportability arises either from overstaying their permitted time in the United States or who belong in one of eleven enumerated categories of major undesirables (based generally on post-entry activities), regardless of their date of entry, who have maintained at least ten years of residence with good moral character. In all categories suspension may only be effected if deportation would "result in exceptional and extremely unusual hardship" to the alien or to a legally resident close relative.[6] Also, in suspensions under paragraphs (1)-(3) the relief may be granted unless disap- [fol. 61] proved by a concurrent resolution of Congress, while under paragraphs (4) and (5) an affirmative resolution is required to make the stay permanent.

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[6] This requirement was intended to be harsher than that in the former statutes. See S. Rep. No. 1137, 82nd Cong., 2nd Sess., quoted in 8 U.S.C.A. §§1-1280 at 67-68.

In general the pattern of the new Act is thus clear: it continues in general terms and for a limited period the category of those who might seek suspension of deportation under the former Act, provided the alien entered before June 27, 1950, substituting, however, a uniform seven years residence with good moral character requirement and the harsher "hardship" provision of the new Act, and restoring the pre-1948 requirement of a mere absence of congressional disapproval. In general aliens in similar circumstances who entered after June 26, 1950, can now qualify for suspension after five years of residence under the provisions of paragraphs (2) and (3), except if their entry was improper, in which case they fall under the ten year requirement of paragraph (4), or if their deportability arises by reason of failure to register (§1251(a)(5)) or because of violation of war emergency laws (§1251(a)(17)) in which case the ten year requirement of paragraph (5) applies. In addition, practically all aliens whose deportation could not have been suspended at all under the former Act may now qualify after ten years under the provisions of paragraphs (4) and (5). Also the racial eligibility provision of the former Acts has been removed, but additional restrictions are imposed on citizens of contiguous countries. It thus appears that Congress very thoroughly reshaped the statute, easing the requirements somewhat by reducing the qualifying time in some instances, eliminating the need for positive congressional approval in many situa- [fol. 62] tions, and in making it possible for some persons to qualify for deportation after ten years of reputable residence and subject to positive congressional approval who could not have qualified at all under the former law; on the other hand requirements were made more severe in other ways, by adopting a rather stricter "hardship" test and by changing the five or seven year requirement to ten for those guilty of certain offenses—including the failure to register under the Alien Registration Act. Even with respect to the pre-June 27, 1950, category changes were made, including the imposition of the uniform seven years residence with good moral character, the new "hardship" clause, and the December 31, 1957, terminal date for application. It cannot be said that the provisions as a whole are meant to be generally more or less restrictive than the former ones; all that can be said is that they appear to be more selectively drawn. Nor can it be said that there was an apparent congressional intent to preserve inviolate all the rights under the former statutes of the pre-June 27, 1950, category.

It should also be noted that for the most part the categories are mutually exclusive.[7] Apparently practically the

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[7] Paragraph (1) excludes all those in paragraphs (2)-(4) and part of paragraph (5) by means of the June 27, 1950, cut-off date; paragraph (2) deals with deportability arising from circumstances at or before entry, while paragraph (3) explicitly and paragraph (5) implicitly deals with those arising from post-entry circumstances; both paragraph (2) and (3) explicitly exclude aliens falling into paragraph (4) and paragraph (3) also explicitly excludes those falling into paragraph (5); the provisions of paragraphs (4) and (5) are also explicitly or implicitly mutually exclusive; paragraph (5) in its principal part lists eleven grounds of deportability to which it applies, nine of which match exclusions under the former act which are now incorporated into paragraph (1), and one inclusion in paragraph (4) similarly matches one more exception to paragraph (1):

> §19(d) of the 1917 Act, as amended, 8 U.S.C. §155(d) (1946 ed.) (quoted in footnote 2, supra) includes the following exceptions, which may be matched as follows with the inclusions in paragraphs (4) and (5):

Exclusions from paragraph (1) (all references to former sections of Title 8)	Inclusions in paragraphs (4) and (5) (All references to present sections of Title 8)
§155(d)(1) referring to §137: anarchists, subversives, etc.	§1251(a)(7)*
§155(d)(2) referring to 21 U.S.C.A. §175: importing narcotics	§1251(a)(11)*
§155(d)(3) referring to §156a: trading in narcotics	§1251(a)(11)*
§155(d)(4) referring to §155(a):	
excludable at time of entry	§1251(a)(1)**
anarchists, subversives, etc.	§1251(a)(7)*

[fol. 63] only clear breakdown in that separation involves the very provision here under consideration: deportability due to failure to register, 18 U.S.C.A. §1251(a)(5), which was not an offense precluding suspension of deportation under the former Act, and which thus does not explicitly [fol. 64] preclude the applicability of paragraph (1) relief under the present Act, but which is specifically listed as included in category (5).

It is certainly clear that Congress in 1952 took a much more serious view of the failure to register than had former legislatures; it is one of the few provisions in which suspension of deportation was made distinctly more difficult

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conviction of crime involving moral turpitude	§1251(a)(4)*
prostitution, white slavery, etc.	§§1251(a)(12), * (18)*
§155(d)(5) referring to §155(b): aiding other aliens to enter illegally	§1251(a)(13)***
conviction of possessing automatic weapon	§1251(a)(14)*
conviction of subversion within 5 years of entry	§1251(a)(15)*
more than one conviction of subversion	§1251(a)(16)*

* included in paragraph (5)
** included in paragraph (4)
*** not included in any paragraph (thus no suspension possible).
(All cross-references taken from cross-reference table, 8 U.S.C.A. xxv-xxx.)

§§1251(a)(2) (entry in violation of law) is apparently the only offense *included* in paragraph (4) which was not *excluded* from paragraph (1) relief (though the offense of illegal entry is listed in former §155(a) it is not an exclusion under §155(d)(4) because it does not relate to "criminals, prostitutes, procurers, or other immoral persons, the mental-prostitutes, procurers, or other immoral persons, the mentally or physically deficient, anarchists, and similar classes")—but the date of the entry determines positively into which category an alien falls. Similarly §§1251(a)(5) (failure to register) and (17) (conviction of violation of war emergency and security laws) are the only offenses *included* in category (5) which are not *excluded* from paragraph (1) relief except insofar as §1251(a)(17) overlaps §§1251(a)(4), (15), (16). Only to this extent is there a breakdown in the mutual exclusiveness of the categories.

(at least for aliens who entered after June 26, 1950) than it had been under the former law, and no liberalizing features have been added. The principal other offense for which this is true is the offense of illegal entry, §1251(a)(2), which, like failing to register, makes control over the alien more difficult and simplifies the offender's problem of avoiding investigation during the qualifying period. In addition aliens who aid others to enter illegally, §1251(a)(13), are entirely precluded from seeking suspension of deportation, thus suggesting that Congress intended to penalize through the immigration laws those who violated them.

In the case of improper entry the Act is clear that only entries subsequent to June 26, 1950, shall be subject to the more severe suspension requirements, for the applicable paragraph is (4) which includes the cut-off restriction, rather than (5), which does not. For failing to register [fol. 65] the more severe conditions clearly apply to aliens entering after June 26, 1950, for they are not covered at all by paragraph (1). It would therefore be highly anomalous for Congress, having expressed the more severe view it now takes of the offense of failure to register, to permit certain persons who violate the registration provisions of the new Act after its passage (e.g., as here, in 1953 and 1954) to receive more consideration than others who are guilty of precisely the same omission at precisely the same time, merely because the former entered the United States earlier than the latter. Such might be the result where both the entry and the offense occurred before the enactment of the new Act (or before the cut-off date two years earlier), but in the present situation, where the new Act gave notice of the more severe consequences of a failure to comply and compliance was still not forthcoming, such a construction is not reasonable. Congress should not be thought to have created two categories of aliens, distinguishable only by their date of entry, whose improper behavior carries different consequences. In view of the above, and in view also of the apparent congressional intent to make the five categories of §1254(a) mutually exclusive, we must hold that the explicit inclusion in category (5) of deportability for failure to register implicitly excludes it from category (1).

The judgment of the district court is Affirmed.

[fol. 66] IN UNITED STATES COURT OF APPEALS

No. 16340

GERYS DESSALERNOS,

v.

JOSEPH SAVORETTI, District Director, United States Immigration and Naturalization Service, Miami, Florida.

JUDGMENT—April 22, 1957

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

[fol. 67] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 68] SUPREME COURT OF THE UNITED STATES

No. 287—October Term, 1957

[Title omitted]

ORDER ALLOWING CERTIORARI—October 14, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office - Supreme Court, U.S.
FILED
JUL 17 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956 1957

No. 287

GERYS DESSALERNOS,
Petitioner,

vs.

JOSEPH SAVORETTI,
District Director of the United States Immigration and Naturalization Service, Miami, Florida,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.........................

GERYS DESSALERNOS,
Petitioner,

vs.

JOSEPH SAVORETTI,
District Director of the United States Immigration and Naturalization Service, Miami, Florida,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, by and through counsel, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, confirming the judgment of the United States District Court for the Southern District of Florida, Miami Division, which dismissed petitioner's complaint for declaratory judgment. Petitioner was seeking a declaration that he was entitled to have his application for suspension of deportation considered by the Attorney General of the United States under the provisions of Section 244(a)(1) of the Immigration and Nationality Act (8) U.S.C. 1254(a)(1).

OPINIONS BELOW

The opinion of the Court of Appeals, set forth in Appendix A, infra, has not yet been reported. The opinion of the District Court is not reported. (Tr. 45, 46).

JURISDICTION

The judgment of the Court of Appeals was entered on April 22, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

DOES THE FACT THAT PLAINTIFF IS ADMITTEDLY STATUTORILY INELIGIBLE FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a)(5) OF THE IMMIGRATION AND NATIONALITY ACT (HE, THE PETITIONER, NOT BEING ABLE TO MEET THE PHYSICAL REQUIREMENTS OF THAT SECTION) PRECLUDE THE PETITIONER FROM PRESENTING FOR CONSIDERATION HIS APPLICATION FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a)(1) OF SAID ACT, IT BEING ADMITTED THAT THE PLAINTIFF FULLY MEETS THE REQUIREMENTS OF THE LATTER SECTION?

STATUTES AND REGULATION INVOLVED

Section 244(a) of the Immigration and Nationality Act, 8 U.S.C. 1254(a) provides:

"Sec. 244. (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who - -

"(1) applies to the Attorney General within five years after the effective date of this Act for suspension of deportation; last entered the United States more than two years prior to the date of enactment of this Act; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(2) last entered the United States within two years prior to or at any time after the date of enactment of this Act; is deportable under any law of the United States solely for an act committed or status existing prior to or at the time of such entry into the United States and is not within the provisions of paragraph (4) of this subsection; was possessed of all the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately preceding his application under this paragraph, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(3) last entered the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under any law of the United States for an act committed or status acquired subsequent to such entry into the United States and is not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(4) last entered the United States within two years prior to, or at any time after the date of enactment of this act; is deportable under paragraph (1) of section 241(a) insofar as it relates to criminals, prostitutes or other immoral persons, subversives, violators of narcotic laws and similar classes or under paragraph (2) of section 241(a), as a person who entered the United States without inspection or at a time or place other than as designated by the Attorney General, or without proper documents and is not within the provisions of paragraph (5) of this subsection; has been physically present in the United States for a continuous period of not less than ten years after such entry and immediately preceding his application under this paragraph and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(5) is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after the date of enactment of this Act, is deportable under paragraph (2) of section 241(a) as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his sprouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

STATEMENT

On the 8th day of February, 1955, petitioner filed his bill of complaint for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for review pursuant to the Administrative Procedure Act (5 U.S.C. 1001 et seq.) and the Immigration and Nationality Act (8 U.S.C. 1252) of the administrative order of deportation entered by the respondent. The petitioner complained that he was a native and citizen of Greece; that he entered the United States on March 11, 1947, at Philadelphia, Pennsylvania, as a seaman and has remained in the United States illegally since that date. That on or about June, 1954, in connection with a deportation proceeding instituted against him, he applied for an adjustment of his immigration status, pursuant to the provisions of Section 244(a)(1) of the

Immigration and Nationality Act (8 U.S.C. 1254(a) (1)), to-wit, suspension of deportation.

The respondent and the Attorney General, throughout the deportation proceedings, have refused to consider his application for suspension of deportation on the ground that they considered him statutorily ineligible for relief from deportation and adjustment of his immigration status under the provisions of Section 244(a) (1) of the Immigration and Nationality Act (8) U.S.C. 1254(a) (1), for the reason that it had been determined that he was also subject to deportation under the provisions of Section 241(a) (5) of the Immigration and Nationality Act (8 U.S.C. 1251 (a) (5)) for failure to submit his annual address report card, and, as a consequence, his application for suspension of deportation would necessarily have to be considered under Section 244(a) (5) of the Immigration and Nationality Act (8 U.S.C. 1254(a) (5)), a provision for which he could not statutorily qualify because of not having resided illegally in the United States for a period of ten years.

The petitioner complained that this reasoning is erroneous and contrary to law, and that having qualified under Section 244(a) (1) of the Immigration and Nationality Act (8 U.S.C. 1254(a) (1)) for suspension of deportation, he was entitled to have his application considered under that provision notwithstanding. (T. 1-5).

On July 11, 1956, the Judge of the United States District Court entered his final judgment deciding the case on the specific issue:

> "Does the fact that plaintiff is admittedly statutorily ineligible for suspension of deportation under section 244(a) (5) of the Immigration and Nationality Act (he, the plaintiff, not being able to meet the physical requirements of that section) preclude the plaintiff from presenting for consideration his application for suspension of deportation under section 244(a) (1) of said Act, it being admitted that the plaintiff fully meets the requirements of the latter section?" (T. 45)

The Court entered its judgment declaring that the interpretation of the law by the Board of Immigration Appeals was correct, and found that the petitioner was statutorily ineligible for suspension of deportation under the provisions of Section 244 (a) (8 U.S.C. 1254 (a)). (T. 46)

The case of *Sevitt* v. *Del Guercio,* U.S.D C. Southern California, decided March 27, 1957, 150 F. Supp. 56, is precisely on point that the applicant was entitled to have his application for suspension of deportation considered by the Attorney General, thus creating a conflict in different jurisdictions, and bearing out and lending strength to the position of the petitioner.

On appeal, the Court of Appeals considered the appeal of the petitioner and, on April 22, 1957, entered its judgment affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The United States District Court, Southern California, Central Division, in the case of *Sevitt* v *Del Guercio, supra,* has decided in direct conflict with the decision relating to the case of the petitioner in the Fifth Circuit Court.

The question involved pertains solely to construction and interpretation of a federal statute, the application of which is of sufficient importance to warrant the consideration of the Supreme Court of the United States.

The administrative agency would serve to impose upon numbers of individuals a burden of meeting a requirement of eligibility for relief from deportation which was not intended by the Congress of the United States.

CONCLUSION

In view of the conflict between decisions of the various courts and in view of the importance of the question presented, it is respectfully submitted that the petition for writ of certiorari should be granted.

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June, 1957

APPENDIX "A"

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 16340

GERYS DESSALERNOS,
Appellant,

versus

JOSEPH SAVORETTI, District Director, United States Immigration and Naturalization Service, Miami. Florida,
Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(April 22, 1957)

Before TUTTLE, JONES and BROWN, Circuit Judges.

TUTTLE, Circuit Judge: This is an appeal from a judgment in an action to review a determination of the Board of Immigration Appeals by which the district court held that appellant is subject to deportation and is statutorily ineligible for waiver of deportation.

The undisputed facts are that appellant is an alien, a native and a citizen of Greece, who last entered the United States on March 11, 1947, as a seaman on a Certificate of Admission permitting a stay of not over 29 days; no extension has ever been applied for or granted. In 1952 appellant registered for the first and only time under the provisions of the Alien Registration Act,[1] and he has since failed to file the annual registration required by 8 U.S.C.A. §1305. The Special Inquiry Officer determined, and the Board of Immigration Appeals and the district court agreed, and appellant does not dispute, that the failure to register was willful and without reasonable excuse.

Appellant is thus deportable both as a nonimmigrant who has failed to comply with the conditions of that status, 8 U.S.C.A. §1251(a)(9), and as an alien who has failed to comply with the provisions of the Alien Registration Act, 8 U.S.C.A. §1251(a)(5). The only issue is whether appellant's application for suspension of deportation should be treated as falling under section 1254(a)(1) of the Title under which he

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[1] 8 U.S.C.A. §1302, formerly 8 U.S.C. §452 (1946 ed.).

[2] §244(a)(1) of the Immigration and Nationality Act of 1952, 8 U.S.C.A. §1254(a)(1), provides as follows:

> "§1254. Suspension of deportation—Adjustment of status for permanent residence; contents
>
> "(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—
>
> "(1) applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or
>
> . . . ."

The application for suspension was filed on August 10, 1954, more than seven years after appellant's entry; the failure to register annually as required by law would apparently not automatically make him a person not "of good moral character" as that term is defined by 8 U.S.C.A. §1101(f), nor would could qualify for discretionary relief by the Attorney General,[2] or under section 1254(a)(5), under which he cannot qualify.[3]

Appellant contends that since he qualifies under one category established by section 1254(a) his application for suspension should be considered under that paragraph, even though he is ineligible under another category whose provisions are applicable to his situation but whose requirements he fails to meet. In particular, appellant argues that Congress, in drafting the 1952 Act, had wished to preserve the right of all aliens whose last entry had occurred before June 27, 1950, (two years prior to date of enactment of the Act) to apply for sus-

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it make him ineligible for suspension of deportation under the now repealed provisions of §19(d) of the Immigration Act of 1917, as amended (formerly 8 U.S.C. §155(d)(1946 ed.)), which read as follows:

"§155. Deportation of undesirable aliens generally.

. . . . .

"(d) The provisions of subsection (c) [permitting suspension of deportation] shall not be applicable in the case of any alien who is deportable under (1) section 137 of this title; (2) section 175 of Title 21; (3) section 156a of this title; (4) any of the provisions of so much of subsection (a) of this section as relates to criminals, prostitutes, procurers, or other immoral persons, the mentally and physically deficient, anarchists, and similar classes; or (5) subsection (b) of this section."

None of the cited exclusions include the failure of an alien to register as required by law; see footnote 6, infra. §244(a)(5) of the Act, 8 U.S.C.A. §1254(a)(5), provides in part as follows:

"§1254. Suspension of deportation—Adjustment of status for permanent residence; contents

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence in the case of an alien who—

. . . . .

"(5) is deportable under paragraphs (4)-(7), (11), (12), (14)-(17), or (18) of section 1251(a) of this title for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States, within two years prior to, or at any time after June 27, 1952, is deportable under paragraph (2) of section 1251(a) of this title as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

Appellant of course has not been a resident of the United States for 10 years since his last failure to register in January 1954, which is an "act" that makes him liable to deportation under §1251(a)(5).

pension of deportation under substantially the provisions and standards of the pre-1952 law, as long as they filed their application at any time before December 31, 1957 (five years after the effective date of the chapter). To support this proposition he points to the provisions of the Act, in which, as detailed below, a generally clear distinction is indeed made, in several paragraphs listed in the disjunctive, between those aliens who entered before and those who entered on or after June 27, 1950; in addition he refers us to the report of the Senate Judiciary Committee which first considered these provisions, which stated:

> "The subcommittee recommends that the present suspension of deportation provisions of the law be abolished within 5 years and that no alien who entered the United States within a period of 2 years prior to the enactment of the proposed legislation shall be eligible under the present suspension provision of the law, as modified."[4]

and then continued with its recommendations for the altered provisions of the new law.

The Government argues, in effect, that the provisions are meant to be mutually exclusive, and that since paragraph (5) refers specifically to the situation of the appellant, i.e. to one who violated the Alien Registration Act, while paragraph (1) only refers generally to aliens "deportable under any law of the United States," under the usual rules of statutory construction he must be treated as a member of the "particular class" into which he falls. *Baltimore National Bank* v. *State Tax Commission of Maryland,* 297 U.S. 209, 215; 82 C.J.S., Statutes §347(b).

The question raised is unfortunately not as easily resolved as each of the parties would have it; as in many cases under this Act the courts must resort to a close study of the complex interrelation of the several provisions of both the present and the former law, both internally and, as required by the frequent crossreferences, with each other. On this particular narrow issue there appear to be no cases to guide us[5] nor has any legislative history more helpful than the general language quoted above been called to our attention. To arrive at the most reasonable construction it will therefore be necessary to examine the entire background and pattern of the pertinent sections.

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[4] "Report of the Senate Committee on the Judiciary pursuant to S.Res. 137," S.Rep. No. 1515, 81st Cong., 2nd Sess., April 20, 1950.

Prior to 1940 there was no statute under which relief from deportation could be granted, and in general such aid could only be secured by means of a private bill in Congress. By the Alien Registration Act of 1940 the Attorney General was given discretionary authority to suspend deportation of aliens not guilty of any major misbehavior, defined by excluding from the relief provision aliens who fell into any of a number of listed categories of undesirables, upon a showing of good moral character for five years and of the threat of serious economic detriment to any legally resident, close relative of the alien, unless Congress passed a concurrent resolution disapproving of such a suspension. 54 Stat. 671, 8 U.S.C. §§155(c),(d) (1946 ed.). In 1948 the provision was changed by *also* permitting the suspension of deportation of aliens not in the excluded categories upon a mere showing of seven years residence (regardless of considerations of hardship to them or to their families), but requiring that in *all* cases of suspension Congress pass an affirmative concurrent resolution approving the stay. 62 Stat. 1206, 8 U.S.C. §155(c) (1946 ed., Supp. 11, 1949).

The 1952 Act completely recast the former suspension provisions. Five general categories of aliens were designated by successive paragraphs of 8 U.S.C.A. §1254 (a): (1) those whose "offense" did not disqualify them for suspension under the former Act (referred to as §19(d) of the Immigration Act of 1917, as amended), who had entered the United States, properly or improperly, before June 27, 1950, and who prior to their application for suspension of deportation had resided here for at least seven years and had maintained a good moral character; (2) those whose deportability arises from some circumstance existing at or before their entry, but not involving any major misbehavior or improper entry (defined by excluding those aliens falling into category (4)), whose entry was subsequent to June 26, 1950, and who have maintained at least five years of residence with good moral character up to the time of application; (3) those whose situation is similar to that of category (2) except that their deportability arises from circumstances after entry; (4) those whose deportability arises either from an improper entry or from major misbehavior before entry, who entered after June 26, 1950, and who have maintained at least ten years of residence with good moral character; (5) those whose deportability arises either from overstaying their permitted time in the United States or who belong in one of eleven enumerated categories of major undesirables (based generally on post-entry activities), regardless of their date of entry, who have maintained at least ten years of residence with good moral character. In all categories suspension may only be effected if deportation would "result in exceptional and extremely unusual hardship" to the alien or to a legally resident close relative.[6] Also, in suspensions under paragraphs (1)-(3) the relief may be granted unless disapproved by a concurrent resolution of Congress, while under paragraphs (4) and (5) an affirmative resolution is required to make the stay permanent.

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[5] See, however, the just reported district court case, Sevitt v. Del Guerico (S.D. Cal.), ...F.Supp.......... (25 U.S.L.W. 2449), which reaches a result contrary to our's below.

In general the pattern of the new Act is thus clear: it continues in general terms and for a limited period the category of those who might seek suspension of deportation under the former Act, provided the alien entered before June 27, 1950, substituting, however, a uniform seven years residence with good moral character requirement and the harsher "hardship" provision of the new Act, and restoring the pre-1948 requirement of a mere absence of congressional disapproval. In general aliens in similar circumstances who entered after June 26, 1950, can now qualify for suspension after five years of residence under the provisions of paragraphs (2) and (3), except if their entry was improper, in which case they fall under the ten year requirement of paragraph (4), or if their deportability arises by reason of failure to register (§1251(a)(5)) or because of violation of war emergency laws (§1251(a)(17)) in which case the ten year requirement of paragraph (5) applies. In addition, practically all aliens whose deportation could not have been suspended at all under the former Act may now qualify after ten years under the provisions of paragraphs (4) and (5). Also the racial eligibility provision of the former Acts has been removed, but additional restrictions are imposed on citizens of contiguous countries. It thus appears that Congress very thoroughly reshaped the statute, easing the requirements somewhat by reducing the qualifying time in some instances, eliminating the need for positive congressional approval in many situations, and in making it possible for some persons to qualify for (suspension of) deportation after ten years of reputable residence and subject to positive congressional approval who could not have qualified at all under the former law; on the other hand requirements were made more severe in other ways, by adopting a rather stricter "hardship" test and by changing the five or seven year requirement to ten for those guilty of certain offenses—including the failure to register under the Alien Registration Act. Even with respect to the pre-June 27, 1950, category changes were made, including the imposition of the uniform seven years residence with good moral character, the new "hardship" clause, and the December 31, 1957, terminal date for application. It cannot be said that the provisions as a whole are meant to be generally more or less restrictive than the former ones; all that can be said is that they appear to be more selectively drawn. Nor can it be said that there was an apparent congressional intent to preserve inviolate all the rights under the former statutes of the pre-June 27, 1950, category.

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[6] This requirement was intended to be harsher than that in the former statutes. See S. Rep. No. 1137, 82nd Cong., 2nd Sess., quoted in 8 U.S.C.A. §§1-1280 at 67-68.

It should also be noted that for the most part the categories are mutually exclusive.[7] Apparently practically the only clear breakdown in that separation involves the very provision here under consideration: deportability due to failure to register, 18 U.S.C.A. §1251 (a) (5), which was not an offense precluding suspension of deportation under the former Act, and which thus does not explicitly preclude the applicability of paragraph (1) relief under the present Act, but which is specifically listed as included in category (5).

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[7] Paragraph (1) excludes all those in paragraphs (2)-(4) and part of paragraph (5) by means of the June 27, 1950, cutoff date; paragraph (2) deals with deportability arising from circumstances at or before entry, while paragraph (3) explicitly and paragraph (5) implicitly deals with those arising from post-entry circumstances; both paragraphs (2) and (3) explicitly exclude aliens falling into paragraph (4) and paragraph (3) also explicitly excludes those falling into paragraph (5); the provisions of paragraphs (4) and (5) are also explicitly or implicitly mutually exclusive; paragraph (5) in its principal part lists eleven grounds of deportability to which it applies, nine of which match exclusions under the former act which are now incorporated into paragraph (1), and one inclusion in paragraph (4) similarly matches one more exception to paragraph (1):

§19(d) of the 1917 Act, as amended, 8 U.S.C. §155(d) (1946 ed.) (quoted in footnote 2, supra) includes the following exceptions, which may be matched as follows with the inclusions in paragraphs (4) and (5):

Exclusions from paragraph (1) (all references to former sections of Title 8)	Inclusions in paragraphs (4) and (5) (All references to present sections of Title 8)
§155(d)(1) referring to §137:	
anarchists, subversives, etc.	§1251(a)(7)*
§155(d)(2) referring to 21 U.S.C.A. §175:	
importing narcotics	§1251(a)(11)*
§155(d)(3) referring to §156a:	
trading in narcotics	§1251(a)(11)*
§155(d)(4) referring to §155(a):	
excludable at time of entry	§1251(a)(1)**
anarchists, subversives, etc.	§1251(a)(7)*
conviction of crime involving moral turpitude	§1251(a)(4)*
prostitution, white slavery, etc.	§§1251(a)(12),* (18)*
§155(d)(5) referring to §155(b):	
aiding other aliens to enter illegally	§1251(a)(13)***
conviction of possessing automatic weapon	§1251(a)(14)*
conviction of subversion within 5 years of entry	§1251(a)(15)*
more than one conviction of subversion	§1251(a)(16)*

* included in paragraph (5)
** included in paragraph (4)
*** not included in any paragraph (thus no suspension possible).
(All cross-references taken from cross-reference table, 8 U.S.C.A. xxv-xxx.)

It is certainly clear that Congress in 1952 took a much more serious view of the failure to register than had former legislatures; it is one of the few provisions in which suspension of deportation was made distinctly more difficult (at least for aliens who entered after June 26, 1950) than it had been under the former law, and no liberalizing features have been added. The principal other offense for which this is true is the offense of illegal entry §1251(a)(2), which, like failing to register, makes control over the alien more difficult and simplifies the offender's problem of avoiding investigation during the qualifying period. In addition aliens who aid others to enter illegally, §1251(a)(13), are entirely precluded from seeking suspension of deportation, thus suggesting that Congress intended to penalize through the immigration laws those who violated them.

In the case of improper entry the Act is clear that only entries subsequent to June 26, 1950, shall be subject to the more severe suspension requirements, for the applicable paragraph is (4) which includes the cut-off restriction, rather than (5), which does not. For failing to register the more severe conditions clearly apply to aliens entering after June 26, 1950, for they are not covered at all by paragraph (1). It would therefore be highly anomalous for Congress, having expressed the more severe view it now takes of the offense of failure to register, to permit certain persons who violate the registration provisions of the new Act after its passage (e.g., as here, in 1953 and 1954) to receive more consideration than others who are guilty of precisely the same omission at precisely the same time, merely because the former entered the United States earlier than the latter. Such might be the result where both the entry and the offense occurred before the enactment of the new Act (or before the cut-off date two years earlier), but in the present situation, where the new Act gave notice of the more severe consequences of a failure to comply and compliance was still not forthcoming, such a construction is not reasonable. Congress should not be thought to have created two categories of aliens, distinguishable only by their date of entry, whose improper behavior carries different consequences. In view of the above, and in view also of the apparent congressional intent to make the five categories of §1254(a) mutually exclusive, we must hold that the explicit inclusion in category (5) of deportability for failure to register implicitly excludes it from category (1).

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§§1251(a)(2) (entry in violation of law) is apparently the only offense *included* in paragraph (4) which was not *excluded* from paragraph (1) relief (though the offense of illegal entry is listed in former §155(a) it is not an exclusion under §155(d)(4) because it does not relate to "criminals, prostitutes, procurers, or other immoral persons, the mentally or physically deficient, anarchists, and similar classes")—but the date of the entry determines positively into which category an alien falls. Similarly §§1251(a)(5) (failure to register) and (17) (conviction of violation of war emergency and security laws) are the only offenses *included* in category (5) which are not *excluded* from paragraph (1) relief except insofar as §1251(a)(17) overlaps §§1251 (a)(4), (15), (16). Only to this extent is there a breakdown in the mutual exclusiveness of the categories.

The judgment of the district court is AFFIRMED.

APPENDIX "B"

THE REPORT OF THE COMMITTEE ON THE JUDICIARY PURSUANT TO S. RES. 137, 81st CONGRESS, SECOND SESSION, REPORT No. 1515.

"The subcommittee recommends that the present suspension of deportation provisions of the law be abolished within 5 years and that no alien who entered the United States within a period of 2 years prior to the enactment of the proposed legislation shall be eligible under the present suspension of deportation provision of the law, as modified.

"The subcommittee recommends the enactment of provisions for adjustment of status where the grounds for deportation of an alien arise prior to entry, as follows:

"(1) That the Commissioner be authorized in his discretion to adjust status in the case of a deportable alien (except one who is of the criminal, subversive, or immoral classes or who enters the United States without proper documents), when (a) the alien has resided in the United States continuously for at least a period of 5 years; and (b) the alien has maintained good moral character for that period; and (c) the deportation of such alien would result in extreme and unusual hardship, and (d) a warrant of arrest for deportation has not been issued within said period for said alien. Each such case is to be reported to the Congress, and if either House, at the session during which the case is reported or during the session following, passes a resolution stating in substance that it does not favor the adjustment of status of the alien to that of a lawful permanent resident, the alien will then be deported. If neither House takes any action on such case the adjustment of status will then become final.

"(2) That the Commissioner be authorized in his discretion to adjust status in the case of a deportable alien who is of the criminal, subversive, or immoral classes or who enters the United States without proper documents, when (a) the alien has resided in the United States continuously for at least a period of 10 years; and (b) the alien has maintained good moral character for that period; and (c) the deportation of such alien would result in extreme and unusual hardship; and (d) a warrant of arrest for deportation has not been issued within said period for said alien. Each such case is to be reported to the Congress, and if the Congress, at the session during which the case is reported or during the session following, passes a resolution stating in substance that it favors the adjustment of status of the alien to that of a lawful permanent resident, the adjustment of status will be final. If the Congress takes no action on such case the alien will then be deported.

"The subcommittee recommends the enactment of provisions for adjustment of status where the grounds for deportation of an alien arose after entry, as follows:

"(1) That the Commissioner be authorized in his discretion to adjust status in the case of a deportable alien (except one who is of the criminal, subversive, or immoral classes or who overstays his period of admission), when (a) the alien has resided in the United States continuously for at least a period of 5 years; and (b) the alien has maintained good moral character for that period; and (c) the deportation of such alien would result in extreme and unusual hardship; and (d) a warrant of arrest for deportation has not been issued within said period for said alien. Each such case is to be reported to the Congress, and if either House, at the session during which the case is reported or during the session following, passes a resolution stating in substance that it does not favor the adjustment of status of the alien to that of a lawful permanent resident, the alien will then be deported. If neither House takes any action on such case the adjustment of status will then become final.

"(2) That the Commissioner be authorized in his discretion to adjust status in the case of a deportable alien who is of the criminal, subversive or immoral classes or who overstays his period of admission, when (a) the alien has resided in the United States continuously for at least a period of 10 years; and (b) the alien has maintained good moral character for that period; and (c) the deportation of such alien would result in extreme and unusual hardship; and (d) a warrant of arrest for deportation has not been issued within said period for said alien. Each such case is to be reported to the Congress, and if the Congress, at the session during which the case is reported or during the session following, passes a resolution stating in substance that it favors the adjustment of status of the alien to that of a lawful permanent resident, the adjustment of status will be final. If the Congress takes no action on such case the alien will then be deported.

"The subcommittee recommends that an alien who entered the United States on a nonimmigrant visa may in the discretion of the Commissioner have his status adjusted to the status of a permant resident if (1) a quota number of the country of which the alien is a national is available, (2) such alien is not inadmissible to the United States under the law, and (3) such alien is not deportable."

APPENDIX "C"

SECTION 244(a)(1), 244(a)(2), 244(a)(3), 244(a)(4), and 244(a)(5) OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 (8 U.S.C. 1254(a)(1), 1254(2)(2), 1254(a)(3), 1254(a)(4), and 1254(a)(5).

"Sec. 244. (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who - -

"(1) applies to the Attorney General within five years after the effective date of this Act for suspension of deportation; last entered the United States more than two years prior to the date of enactment of this Act; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(2) last entered the United States within two years prior to or at any time after the date of enactment of this Act; is deportable under any law of the United States solely for an act committed or status existing prior to or at the time of such entry into the United States and is not within the provisions of paragraph (4) of this subsection; was possessed of all the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately preceding his application under this paragraph, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(3) last entered the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under any law of the United States for an act committed or status acquired subsequent to such entry into the United States and is not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(4) last entered the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under paragraph (1) of section 241(a) insofar as it relates to criminals, prostitutes or other immoral persons, subversives, violators of narcotic laws and similar classes or under paragraph

(2) of section 241(a), as a person who entered the United States without inspection or at a time or place other than as designated by the Attorney General, or without proper documents and is not within the provisions of paragraph (5) of this subsection; has been physically present in the United States for a continuous period of not less than ten years after such entry and immediately preceding his application under this paragraph and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(5) is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241(a) for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after the date of enactment of this Act, is deportable under paragraph (2) of section 241(a) as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

APPENDIX "D"

SECTION 19(d) OF THE IMMIGRATION ACT OF 1917, AS AMENDED (8 U.S.C. 155(d))

"(d) The provisions of subsection (c) shall not be applicable in the case of any alien who is deportable under (1) section 137 of this title; (2) section 175 of Title 21; (3) section 156a of this title; (4) any of the provisions of so much of subsection (a) of this section as relates to criminals, prostitutes, procurers, or other immoral persons, the mentally and physically deficient, anarchists, and similar classes; or (5) subsection (b) of this section. Feb. 5, 1917, c. 29, §19, 39 Stat. 889; Ex. Ord. No. 6166, §14, June 10, 1933; Reorg. Plan No. V, eff. June 14, 1940, 5 Fed. Reg. 2423, 54 Stat. 1238; June 28, 1940, c. 439, Title II, §20, 54 Stat. 671."

APPENDIX "E"

Bennie SEVITT, Plaintiff,

v.

Albert DEL GUERCIO, Officer in Charge, Immigration and Naturalization Service, Los Angeles, California, Defendant.

No. 19588

United States District Court
S. D. California, Central Division.
March 27, 1957.

Deportation proceeding. The Board of Immigration Appeals dismissed alien's appeal from findings of Immigration and Naturalization Service and dismissed his application for suspension of deportation and alien sought judicial review of such administrative action. The District Court, Byrne, J., held that where alien satisfied requirements of one of five alternative paragraphs provided by statute for the relief of suspension of deportation, his application for suspension of deportation should have been considered by Board of Immigration Appeals notwithstanding the fact that he was not qualified for suspension of deportation under another paragraph of said statute specifically referring to section of law making the offense with which alien was charged, deportable.

Judgment in accordance with opinion.

1. Aliens—Key 54(1)

Statute providing that a deportable alien would be eligible for discretionary relief of suspension of depor-

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1. Plaintiff was also found deportable for violation of 8 U.S.C.A. §1251(a) (9), in that as a temporary visitor for pleasure he failed to comply with the conditions of that status. However, in this proceeding we are only concerned with the administrative decision relating to 8 U.S.C.A. §1251(a) (5), as the ultimate issue here is whether the plaintiff's application for suspension of deportation may be considered, and the determination of that issue depends upon the construction to be given 8 U.S.C.A. §1251(a) (5).

tation if he qualified under provisions of five numbered paragraphs separated by the word "or", by the use of the disjunctive conjunction, "or", presented a choice dependent only upon alien meeting the standards required in particular paragraph which alien might seek to use. Immigration and Nationality Act, §244(a) (1-5), 8 U.S.C.A. §1254(a) (1-5).

2. Aliens—Key 54(1)

Where alien satisfied requirements of one of five alternative paragraphs provided by statute for relief of suspension of deportation, his application for suspension of deportation should have been considered by Board of Immigration Appeals, notwithstanding the fact that he was not qualified for suspension of deportation under another paragraph of said statute specifically referring to section of law making the offense with which alien was charged deportable. Immigration and Nationality Act, §244(a) (1-5), 8 U.S.C.A. §1254(a) (1-5).

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2. "§1254. Suspension of deportation—Adjustment of status for permanent residence; contents

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

"(1) applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(2) last entered the United States within two years prior to or at any time after June 27, 1952; is deportable under any law of the United States solely for an act committed or status existing prior to or at the time of such entry into the United States and is not within the provisions of paragraph (4) of this subsection; was possessed of all of the requisite documents at the time of such entry into the United States; * * * has been physically present in the United States for a continuous period of not less than five years immediately preceding his application under this paragraph, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely

3. Statutes—Key 190

Although court may depart from the strict wording of a statute in order to give the statute a reasonable construction where a literal construction would result in absurdity or defeat the object intended by Congress, where a statute is clear and unambiguous, it must be literally construed.

Wirin, Rissman & Okrand, Los Angeles, Cal., for plaintiff.

Laughlin E. Waters, U. S. Atty., Max F. Deutz, Volney V. Brown, Jr., Asst. U. S. Attys., Los Angeles, Calif., for defendant.

BYRNE, District Judge.

Bennie Sevitt is an alien, a native and citizen of Ireland who entered the United States on March 18, 1947, with a visitor's visa. He has resided in this country continuously since that time.

After a hearing conducted by a Special Inquiry Officer of the Immigration and Naturalization Service, Sevitt was found to be deportable under 8 U.S.C.A. §1251(a) (5)[1] for failure to register and notify the Immigration and Naturalization Service of his address in the United States or to notify them of changes of address as required by 8 U.S.C.A. §1305. Timely application for suspension of deportation was filed and an appeal was taken to the Board of Immigration Appeals,

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unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(3) last entered the United States within two years prior to, or at any time after June 27, 1952; is deportable under any law of the United States for an act committed or status acquired subsequent to such entry into the United States and is not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all of the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the which Board dismissed the appeal and refused to consider plaintiff's application for suspension of deportation because it thought it was barred from doing so.

Sevitt has exhausted his administrative remedies and here seeks judicial review of the administrative action. 5 U.S.C.A. §1009; 8 U.S.C.A. §1252; Shaughnessy v. Pedreiro, 349 U.S. 48, 75 S.Ct. 591, 99 L.Ed. 868.

The plaintiff asserts that there is no reasonable, substantial or probative evidence to support the administrative finding that he failed to furnish address information as required by 8 U.S.C.A. §1305 or to support the finding that such failure was wilful and not excusable. This argument is without merit. The administrative record shows (Brief filed with Board) Sevitt conceded "* * * that until the time of his arrest by Immigration Officers he did not furnish the required address information" and that "he failed to register because he feared detection * * *". The record also shows that during the period he failed to comply with the address requirements, he used a fictitious name. It is an understatement to say that the administrative findings were based upon reasonable substantial and probative evidence.

A more serious problem is presented on the question of whether the Board of Immigration Appeals erred in refusing to consider Sevitt's application for suspension of deportation.

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time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(4) last entered the United States within two years prior to, or at any time after June 27, 1952; is deportable under paragraph (1) of section 1251 (a) of this title insofar as it relates to criminals, prostitutes or other immoral persons, subversives, violators of narcotic laws and similar classes or under paragraph (2) of section 1251(a) of this title, as a person who entered the United States without inspection or at a time or place other than as designated by the Attorney General, or without the proper documents and is not within the provisions of paragraph (5) of this subsection; has been physically present in the United States for a continuous period of not less than ten years after such entry and immediately preceding his application under this paragraph and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying

The authority to grant the relief of suspension of deportation is found in 8 U.S.C.A. §1254(a)[2] which is divided into five paragraphs numbered (1) to (5). Each of the five paragraphs relates to different classes of aliens, the classification depending upon when the alien entered the United States, the grounds of deportation, whether the deportable act was committed or status existed prior to entry, at the time of entry, or subsequent to entry, and the length of time the alien has been present in the United States.

The complexity of the problem in the instant case results from the fact that an alien such as Sevitt who has violated the registration requirements falls within the provisions of *both* paragraph (1) and paragraph (5), except that to be eligible for suspension of deportation under (5), the alien must have been physically present in the United States for a continuous period of not less than ten years immediately following the commission of the act (failure to register) for which he is deportable; whereas to be eligible under (1), the alien need only be present in the United States for a period of not less than seven years immediately preceding the date of application for suspension of deportation. The crucial importance of this difference to Sevitt is that he has been in this country for the seven-year period

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to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(5) is deportable under paragraphs (4)-(7), (11), (12), (14)-(17), or (18) of section 1251(a) of this title for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after June 27, 1952, is deportable under paragraph (2) of section 1251(a) of this title as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

required under (1) but has not been in the country for the ten-year period required under (5).

The Board of Immigration Appeals refused to consider Sevitt's application for suspension of deportation for the reason, as counsel for the Government now argues, that while the reference in paragraph (1) to aliens "deportable under any law of the United States" technically includes aliens deportable for failure to meet registration requirements, paragraph (1) does not apply to such aliens because paragraph (5) *specifically refers to the section* of law making that offense deportable. It is the government's position that when an alien is deportable under any provision of law specifically mentioned in paragraph (5), his application for suspension of deportation may be considered, if at all, only under that paragraph.

[1, 2] The five paragraphs of §1254(a) show a statutory design to enact remedial legislation covering a number of different contingencies. In formulating the several possible categories, Congress provided that a deportable alien is eligible for the discretionary relief of suspension of deportation if he qualifies under the provisions of paragraphs (1) *or* (2) *or* (3) *or* (4) *or* (5). By the use of the disjunctive conjunction, "or", it is clear that Congress intended to present a choice dependent only upon the alien meeting the standards as required in the particular paragraph he seeks to avail himself of. Sevitt satisfies the requirements of paragraph (1) as he applied for the relief within five years after the effective date of the 1952 Act; he entered the United States more than two years prior to the enactment of the Act; he is deportable under a law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the 1917 Act, 39 Stat. 889; he has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of his application. It follows that his application should have been considered by the Board of Immigration Appeals.

Under the provisions of §1254(e) an alien who is deportable for failure to comply with the registration requirements may be granted the privilege of voluntary departure only if he can meet the ten-year requirement of §1254(a)(5). It is unreasonable to believe, asserts the government, that notwithstanding Sevitt's inability to meet the standards for the discretionary relief of voluntary departure, Congress intended that he be eligible for the greater relief of suspension of deportation under the standards set forth in paragraph (1) of §1254(a). The answer to this assertion may be found in the time limitation of paragraph (1) which paragraph by its terms becomes ineffective after June 27, 1957. However, be that as it may, the courts should not resort to conjecture regarding policy decisions of Congress.

[3] While it is the rule that the courts may depart from the strict wording of a statute in order to give the statute a reasonable construction where a literal construction would result in an absurdity or defeat the object intended by Congress, Miller v. Bank of America N.T.&S.A., 9 Cir., 166 F.2d 415, where the statute is clear and unambiguous it must be literally construed. Hamilton v. Rathbone, 175 U.S. 414, 20 S.Ct. 155, 44 L.Ed. 219; Thompson v. United States, 246 U.S. 547, 38 S.Ct. 349, 62 L.Ed. 876; Crooks v. Harrelson, 282 U.S. 55, 51 S.Ct. 49, 75 L.Ed. 156. Nothing could be clearer than the statement of Congress that the Attorney General may, in his discretion, suspend deportation in the case of an alien who meets the standards prescribed in paragraph (1) of §1254(a).

This Court in Acosta v. Landon, D.C., 125 F.Supp. 434, 441, said:

> "The courts may not suspend the deportation of a deportable alien as that discretionary power is vested solely in the Attorney General, 8 U.S.C.A. §1254. However, when the Attorney General is required as a condition precedent to an order of deportation to exercise his discretion with respect to the suspension of deportation, the validity of the

> order must rest upon the needed exercise of discretion. If it is lacking, the order is ineffective. Where the order is ineffective, the custody of the petitioner is unlawful, and the court must order his discharge. A formal order to that effect will be entered."

Acosta v. Landon was a habeas corpus proceeding and Acosta was in custody. Sevitt is not in custody and there is no need to order his discharge. However, the order of deportation is ineffective and the alien may not be deported until the Attorney General, acting through his subordinates, has exercised his discretion. Judgment will be entered accordingly.

Counsel for plaintiff will prepare, serve and lodge findings and judgment pursuant to Rule 7 of the Rules of this Court.

JUDGMENT

EXTRACT FROM THE MINUTES OF APRIL 22, 1957

GERYS DESSALERNOS,

No. 16340 versus

JOSEPH SAVORETTI, District Director,
United States Immigration and
Naturalization Service,
Miami, Florida

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

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FILED
FEB 21 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 287

GERYS DESSALERNOS,
Petitioner,

vs.

JOSEPH SAVORETTI,
District Director of the United States Immigration and Naturalization Service, Miami, Florida,
Respondent.

BRIEF OF PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 287

GERYS DESSALERNOS,
Petitioner,

vs.

JOSEPH SAVORETTI,
District Director of the United States Immigration and Naturalization Service, Miami, Florida,
Respondent.

BRIEF OF PETITIONER

OPINIONS BELOW

The opinion of the District Court is not reported. The opinion of the United States Court of Appeals is reported in 244 F. 2d 178.

JURISDICTION

The judgment of the Court of Appeals was entered on April 22, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

DOES THE FACT THAT PETITIONER IS ADMITTEDLY STATUTORILY INELIGIBLE FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a) (5) OF THE IMMIGRATION AND NATIONALITY ACT PRECLUDE THE PETITIONER FROM PRESENTING FOR CONSIDERATION HIS APPLICATION FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a) (1) OF SAID ACT, IT BEING ADMITTED THAT THE PETITIONER FULLY MEETS THE REQUIREMENTS OF THE LATTER SECTION?

STATUTES AND REGULATIONS INVOLVED

Section 244(a) of the Immigration and Nationality Act, 8 U.S.C. 1254(a) provides:

"Sec. 244. (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who . . .

"(1) applies to the Attorney General within five years after the effective date of this Act for suspension of deportation; last entered the United States more than two years prior to the date of enactment of this Act; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(2) last entered the United States within two years prior to or at any time after the date of enactment of this Act; is deportable under any law of the United States solely for an act committed or status existing prior to or at the time of such entry into the United States and is not within the provisions of paragraph (4) of this subsection; was possessed of all the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately preceding his application under this paragraph, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(3) last entered the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under any law of the United States for an act committed or status acquired subsequent to such entry into the United States and is not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(4) last entered the United States within two years prior to, or at any time after the date of enactment of this act; is deportable under paragraph (1) of section 241(a) insofar as it relates to criminals, prostitutes or other immoral persons, subversives, violators of narcotic laws and similar classes or under paragraph (2) of section 241(a), as a person who entered the United States without inspection or at a time or place other than as designated by the Attorney General, or without proper documents and is not within the provisions of paragraph (5) of this subsection; has been physically present in the United States for a continuous period of not less than ten years after such entry and immediately preceding his application under this paragraph and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(5) is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241(a) for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after the date of enactment of this Act, is deportable under paragraph (2) of section 241(a) as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

STATEMENT

On the 8th day of February, 1955, petitioner filed his bill of complaint for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for review pursuant to the Administrative Procedure Act (5 U.S.C. 1001 et seq.) and the Immigration and Nationality Act (8 U.S.C. 1252) of the administrative order of deportation entered by the respondent. The petitioner complained that he was a native and citizen of Greece; that he entered the United States on March 11, 1947, at Philadelphia, Pennsylvania, as a seaman and has remained in the United States illegally since that date. That on or about June, 1954, in connection with a deportation proceeding instituted against him, he applied for an adjustment of his immigration status, pursuant to the provisions of Section 244 (a) (1) of the Immigration and Nationality Act (8 U.S.C. 1254 (a) (1)), to-wit, suspension of deportation.

The respondent and the Attorney General, throughout the deportation proceedings, have refused to consider his application for suspension of deportation on the ground that they considered him statutorily ineligible for relief from deportation and adjustment of his immigration status under the provisions of Section 244 (a) (1) of the Immigration and Nationality Act (8 U.S.C. 1254 (a) (1)), for the reason that it had been determined that he was also subject to deportation under the provisions of Section 241 (a) (5) of the Immigration and Nationality Act (8 U.S.C. 1251 (a) (5)) for failure to submit his annual address report card, and, as a consequence, his application for suspension of deportation would necessarily have to be considered under Section 244(a) (5) of the Immigration and Nationality Act (8 U.S.C. 1254 (a) (5)), a provision for which he could not statutorily qualify because of not having resided illegally in the United States for a period of ten years, as required in that subsection (Tr. 9-10).

The petitioner complained that this reasoning is erroneous and contrary to law, and that having qualified under Section 244(a) (1) of the Immigration and Nationality Act (8 U.S.C. 1254(a) (1)) for suspension of deportation, he was entitled to have his application considered under that provision notwithstanding, and to have the discretion of the Attorney General exercised (Tr. 1, 2, 3).

On July 11, 1956, the Judge of the United States District Court entered his final judgment deciding the case on the specific issue:

> "Does the fact that plaintiff is admittedly statutorily ineligible for suspension of deportation under section 244(a) (5) of the Immigration and Nationality Act (he, the plaintiff, not being able to meet the physical requirements of that section) preclude the plaintiff from presenting for consideration his application for suspension of deportation under section 244(a) (1) of said Act, it being admitted that the plaintiff fully meets the requirements of the latter section?" (Tr. 34-35)

The Court entered its judgment declaring that the interpretation of the law by the Board of Immigration Appeals was correct, and found that the petitioner was statutorily ineligible for suspension of deportation under all of the provisions of Section 244(a) (8 U.S.C. 1254(a)) (Tr. 35).

On appeal, the Court of Appeals considered the appeal of the petitioner and, on April 22, 1957, entered its judgment affirming the judgment of the District

Court. On October 14, 1957, certiorari was granted on petitioner's petition for certiorari filed July 17, 1957 (Tr. 50).

ARGUMENT

QUESTION:

> "DOES THE FACT THAT PETITIONER IS ADMITTEDLY STATUTORILY INELIGIBLE FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a) (5) OF THE IMMIGRATION AND NATIONALITY ACT PRECLUDE THE PETITIONER FROM PRESENTING FOR CONSIDERATION HIS APPLICATION FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a) (1) OF SAID ACT, IT BEING ADMITTED THAT THE PETITIONER FULLY MEETS THE REQUIREMENTS OF THE LATTER SECTION?"

The answer should be that if the applicant does meet the requirements of Section 244(a) (1) of the Immigration and Nationality Act (8 U.S.C. 1254(a) (1)), he is entitled to have his application considered, notwithstanding the provisions of Section 244(a) (5) of said Act, and is entitled to an exercise of the Attorney General's discretion on the application.

The District Court in its final judgment found that there was no true issue of fact to be tried, and further that the petitioner fully met the requirements of Section 244(a) (1) of the Immigration and Nationality Act (8 U.S.C. 1254(a) (1)). Therefore, it is unnecessary to indulge in further discussion concerning this point. The simple question is whether or not the petitioner would have to qualify under Section 244(a) (5) of the Immigration and Nationality Act (8 U.S.C. 1254(a) (5)) *as well,* in order to have the Attorney General of the United States consider his application, this latter section imposing upon the petitioner residential requirements of ten years, which the petitioner unfortunately does not possess.

The respondent reasons that at the time of the deportation hearing an additional charge of deportation was lodged and sustained that he was deportable under Section 241 (a) (5) of the Immigration and Nationality Act (8 U.S.C. 1251 (a) (5)); that he is, therefore, required to qualify for suspension of deportation under Section 244 (a) (5) of said Act, and cannot predicate his application for suspension of deportation upon Section 244 (a) (1), under which the petitioner does qualify.

At first reading, it would seem to appear that the drafters of the section had been careless in their construction of the various sections of 244 (a); so that Section 244 (a) (1) and Section 244 (a) (5) might appear inconsistent with each other in some respects. The provisions, however, are not in conflict at all.

In order to afford the reader an opportunity to see that such was not the case, it is necessary to consult the legislative background. In doing so, it is readily perceivable that Section 244 (a) (1) of the Immigration and Nationality Act (8 U.S.C. 1254 (a) (1)) was incorporated into suspension-of-deportation features of the Act for a specific reason and for the purpose of securing to a class of aliens benefits that had inured to them under the provisions of Section 19 (c) of the Immigration Act of February 5, 1917 (8 U.S.C. 155 (c)).[1]

The Immigration and Nationality Act of 1952 repealed, on December 24, 1952, the provisions of the Immigration Act of February 5, 1917. In the Report of the Committee on the Judiciary pursuant to S. Res. 137, 81st Congress, Second Session, Report No. 1515, the Congressional Committee made the following recommendation concerning suspension of deportation:

---

[1] "Deportation of any alien may be suspended if he is deportable on grounds other than that he is a member of one of the following classes: Criminal, immoral, subversive, mentally or physically deficient, or smuggler. The alien must prove that he has been of good moral character for at least five years preceding his application, and that deportation would result in serious economic detriment to a citizen or legally resident alien who is a spouse, parent, or minor child, or that he was in the United States on July 1,1948, and has resided here for seven years or more."

> *"The subcommittee recommends that the present suspension of deportation provisions of the law be abolished within five years and that no alien who entered the United States within a period of two years prior to the enactment of the proposed legislation shall be eligible under the present suspension of deportation provision of the law, as modified."* (italics ours)

Thus it is clear that Section 244(a) (1) of the Immigration and Nationality Act (8 U.S.C. 1254(a) (1)) carries out this Congressional intent to confer on persons *then* residing illegally in the United States, who could qualify under Section 19(c) of the Immigration Act of February 5, 1917 (8 U.S.C. 155(c)), a continuing privilege for a period of five years after the date the Immigration and Nationality Act of 1952 became effective, provided that he had entered the United States more than two years prior to the effective date of that Act.

This provision established a special class, which could not be added to by the passage of time, and protected their interests for a period of five years. The petitioner belongs to this class.

The preamble of Section 244(a) of the Immigration and Nationality Act (8 U.S.C. 1254(a) (1)) states:

> "As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who . . . "

and thereafter lists five subsections, each of which subsections is separated by the word "or". The use of the word "or" gives the construction of the subsections a clear meaning that each subsection is to stand independently, and that an applicant may qualify under any one of the five subsections, so that the Attorney General may consider an application thereunder on its merits and invoke his discretion.

Section 244(a) (1) of the Immigration and Nationality Act (8 U.S.C. 1254(a) (1)) provides:

> "(1) applies to the Attorney General within five years after the effective date of this Act for suspension of deportation; last entered the United States more than two years prior to the date of enactment of this Act; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or"

A careful examination of each subsection would indicate that each subsection contains its independent provisions that exclude certain classes of aliens from eligibility. Most significant is that portion of Section 244(a) (1) which characterizes those who qualify:

> *"is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended;"* (italics ours)

No reference to the prior effective Act of 1917 is made in any other subsection of 244(a).

Section 19(d) refers generally to those aliens who are deportable because of belonging to certain criminal, immoral, or subversive classes and was, prior to the present Act, a condition of eligibility for suspension of deportation.

Comparing the remaining subsections, it is clear that subsections 244(a) (2), 244(a) (3), 244(a) (4), and 244(a) (5) of the Immigration and Nationality Act (8 U.S.C. 1254(a) (2), 1254(a) (3), 1254(a) (4), and 1254(a) (5)) follows those recommendations made by the Subcommittee on Immigration, as new grounds for suspension of deportation that would fall within the deportation provisions of the Immigration and Nationality Act of 1952. Section 244(a) (2), is for the most part analagous to Section 244(a) (1), but because of the time provisions contained therein, did not serve to give relief to any person who entered the United States more than two years prior to the enactment of the Immigration and Nationality Act on December 24, 1952. Within each of these four subsections independent exclusionary provisions for eligibility are self-incorporated.

In subsection 244(a) (2) it is said:

> "is not within the provisions of paragraph (4) of this subsection".

In subsection 244(a) (3) it is said:

> "is not within the provisions of paragraph (4) or (5) of this subsection".

In subsection 244(a) (4) it is said:

> "is not within the provisions of paragraph (5) of this subsection".

In subsection 244(a) (5) all persons excluded from qualifying in subsections 244(a) (2), 244(a) (3), and 244(a) (4) are permitted to qualify.

Thus it is clear that Section 244(a) (1) stands alone and for a specific purpose, and persons qualifying thereunder qualify independently of all other subsections of 244(a). Ineligibility under one subsection does not exclude eligibility under another.

Subsections 244(a) (2) and 244(a) (3) pertain to persons whose grounds for deportability arose conjunctively with their entry into the United States, and impose the requirement that they must have last entered the United States within two years prior to, or at any time after, the date of the enactment of the Immigration and Nationality Act of 1952, which would indicate that it is prospective, without limitation in its application; whereas Section 244(a) (1) died on December 24, 1957.

Reading the various subsections in para materia with the recommendations of the Subcommittee on Immigration, it is clear that this subsection was promulgated for the purpose of preserving to persons such as the petitioner the right to have an application for suspension of deportation considered under the provisions of a law analagous to Section 19(c) of the Immigration Act of February 5, 1917, (U.S.C. 155(c)), and to give them ample opportunity for a period of five years to exercise their rights thereunder.

It is clear that the respondent has neglected to consult the legislative intent in order to administer this provision of the law pertaining to suspension of deportation.

"The five paragraphs of §1254(a) show a statutory design to enact remedial legislation covering a number of different contingencies. In formulating the several possible categories, Congress provided that a deportable alien is eligible for the discretionary relief of suspension of deportation if he qualifies under the provisions of paragraphs (1) *or* (2) *or* (3) *or* (4) *or* (5). By the use of the disjunctive conjunction, "or," it is clear that Congress intended to present a choice dependent only upon the alien meeting the standards as required in the particular paragraph of which he seeks to avail himself. Sevitt satisfies the requirements of paragraph (1) as he applied for the relief within five years after the effective date of the 1952 Act; he entered the United States more than two years prior to the enactment of the Act; he is deportable under a law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the 1917 Act, 39 Stat. 889; he has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of his application. It follows that his application should have been considered by the Board of Immigration Appeals.

* * * * *

"Under the provisions of §1254(e) an alien who is deportable for failure to comply with the registration requirements may be granted the privilege of voluntary departure only if he can meet the ten-year requirement of §1254(a) (5). It is unreasonable to believe, asserts the government, that notwithstanding Sevitt's inability to meet the standards for the discretionary relief of voluntary departure, Congress intended that he be eligible for the greater relief of suspension of deportation under the standards set forth in paragraph (1) of §1254(a). The answer to this assertion may be found in the time limitation of paragraph (1) which paragraph by its terms became ineffective after June 27, 1957. However, be that as it may, the courts should not resort to conjecture regarding policy decisions of Congress.

* * * * *

"While it is the rule that the courts may depart from the strict wording of a statute in order to give the statute a reasonable construction where a literal construction would result in an absurdity or defeat the object intended by Congress, *Miller* v. *Bank of America N.T. & S.A.,* 9 Cir., 166 F. 2d 415, where the statute is clear and unambiguous it must be literally construed. *Hamilton* v. *Rathbone,* 175 U.S. 414, 20 S. Ct. 155, 44 L. Ed. 219; *Thompson* v. *United States,* 246 U. S. 547, 38 S. Ct. 349, 62 L. Ed. 876; *Crooks* v. *Harrelson,* 282 U. S. 55, 51 S. Ct. 49, 75 L. Ed. 156. Nothing could be clearer than the statement of Congress that the Attorney General may, in his discretion, suspend deportation in the case of an alien who meets the standards prescribed in paragraph (1) of §1254(a)." *Sevitt* v. *Del Guercio,* 150 F. Supp. 56.

If doubt remains as to the Congressional intent, Title 8 of the United States Code Annotated contains in Volume I a "Commentary on the Immigration and Nationality Act" by Walter M. Besterman, Legal Assistant to the Committee on the Judiciary, House of Representatives of the United States, who assisted in the preparation of the Act. At page 68 he states:

> "In addition to meeting the hardship test and proving that he is a person of good moral character, the alien applying for suspension of deportation must comply with specific requirements and otherwise fall *within one of the five specific categories* set forth by the Act." (emphasis supplied)

As further proof of the intention of Congress that Section 244(a) (1) should stand independently at least of all other Sections in Section 244(a), is the fact that only Section 244(a) (1) permits an application for suspension of deportation in spite of a final order of deportation. Suspension of deportation cannot be granted in Sections 244(a) (2), (3), (4), or (5) categories, if prior to application for relief a final order of deportation issued under the new Act had been served on the alien.

This serves as further proof of the intention of Congress to preserve rights to that class of aliens who were subject to deportation under the provisions of the Immigration Act of 1917, as a savings feature. The savings clause features of the Immigration and Nationality Act have been liberally construed by the courts.

CONCLUSION

It is recommended that the judgment be reversed and the cause be remanded to the United States District Court for appropriate order remanding the cause to the United States Immigration and Naturalization Service for consideration of the petitioner's application for suspension of deportation under Section 244(a) (1) on its merits, and exercise of the Attorney General's discretion.

Respectfully submitted,

DAVID W. WALTERS,
Attorney for Petitioner.

CERTIFICATE AS TO SERVICE OF COPIES OF BRIEF OF PETITIONER

STATE OF FLORIDA } *ss.*
COUNTY OF DADE }

This day personally appeared before me, the undersigned authority, DAVID W. WALTERS, who, being first duly sworn, deposes and states that he is Attorney for the Petitioner in the above-styled cause; that he served two copies of Brief of Petitioner, in the above-styled cause, on this 20 day of February, A. D. 1958, upon THE HONORABLE J. LEE RANKIN, Solicitor General, Department of Justice, Washington 25, D. C., by enclosing such copies in an envelope addressed to The Honorable J. Lee Rankin, Solicitor General, Department of Justice, Washington 25, D. C., and, after sealing the same and affixing thereto sufficient postage to carry it to its destination by airmail, deposited same in the United States Post Office Letter Box in the Ainsley Building, in the City of Miami, Florida.

Affiant further states that he served two copies of said Brief of Petitioner, on this 20 day of February, A. D. 1958, upon THE HONORABLE JAMES L. GUILMARTIN, United States Attorney, Post Office Building, Miami 32, Florida, by enclosing such copies in an envelope addressed to The Honorable James L. Guilmartin, United States Attorney, Post Office Building, Miami 32, Florida, and, after sealing the same and affixing thereto sufficient postage to carry it to its destination, deposited same in the United States Post Office Letter Box in the Ainsley Building, in the City of Miami, Florida.

Affiant further states that he served a copy of said Brief of Petitioner, on this 20 day of February, A. D. 1958, upon the defendant, JOSEPH SAVORETTI, District Director of the United States Immigration and Naturalization Service, Miami, Florida, by enclosing such copy in an envelope addressed to Joseph Savoretti, District Director, United States Immigration and Naturalization Service, Miami, Florida, Post Office Box 622, Biscayne Annex, Miami 52, Florida, and, after sealing the same and affixing thereto sufficient postage to carry it to its destination, deposited same in the United States Post Office Letter Box in the Ainsley Building, in the City of Miami, Florida.

David W. Walters

SUBSCRIBED and sworn to before me at Miami, Florida, this 20 day of February, A. D. 1958.

Notary Public, State of Florida at Large

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JOHN T. FEY, Clerk

No. 287

In the Supreme Court of the United States

OCTOBER TERM, 1957

GERYS DESSALERNOS, PETITIONER

v.

JOSEPH SAVORETTI, DISTRICT DIRECTOR, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, MIAMI, FLORIDA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

October Term, 1957

No. 287

Gerys Dessalernos, petitioner

v.

Joseph Savoretti, District Director, United States Immigration and Naturalization Service, Miami, Florida

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. A) is reported at 244 F. 2d 178. The order of the District Court appears at pp. 45–46 of the record.

JURISDICTION

The judgment of the Court of Appeals was entered on April 22, 1957. The petition for a writ of certiorari was filed on July 17, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether petitioner, who was ordered deported for failure to report as an alien, had to meet, in order to be eligible for suspension of deportation, the ten-year residence requirement fixed by Section 244 (a) (5) of the Immigration and Nationality Act of 1952, rather than the seven-year requirement fixed by Section 244 (a) (1).

STATUTES INVOLVED

The Immigration and Nationality Act of 1952, 66 Stat. 163, provides in pertinent part:

> Section 241 (a), 8 U. S. C. 1251 (a):
>
> Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> * * * * *
>
> (5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 266 (c) of this title, or under section 36 (c) of the Alien Registration Act, 1940, * * *.
>
> * * * * *
>
> (9) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status;
>
> * * * * *
>
> Section 244 (a), 8 U. S. C. 1254 (a):
>
> As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

(1) applies to the Attorney General within five years after the effective date of this Act for suspension of deportation; last entered the United States more than two years prior to the date of enactment of this Act [June 27, 1952]; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19 (d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

* * * * *

(5) is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241 (a) for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after the date of enactment of this Act [June 27, 1952], is deportable under paragraph (2) of section 241 (a) as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the as-

sumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence.

Section 265, 8 U. S. C. 1305:

> Every alien required to be registered under this title, or who was required to be registered under the Alien Registration Act, 1940, as amended, who is within the United States on the first day of January following the effective date of this Act, or on the first day of January of each succeeding year shall, within thirty days following such dates, notify the Attorney General in writing of his current address and furnish such additional information as may by regulations be required by the Attorney General. Any such alien shall likewise notify the Attorney General in writing of each change of address and new address within ten days from the date of such change. * * *

STATEMENT

The petition seeks review of the judgment of the Court of Appeals for the Fifth Circuit, which affirmed the order of the United States District Court for the Southern District of Florida dismissing petitioner's complaint for a declaration that he was entitled to have his application for suspension of deportation considered by the Attorney General pursuant to Section 244 (a) (1) of the Immigration and Nationality Act of 1952, 8 U. S. C. 1254 (a) (1), *supra,* pp. 2–3.

Petitioner, a native and citizen of Greece, entered the United States on March 11, 1947, as a seaman on a certificate of admission which permitted a stay of not over 29 days (R. 18–19). He illegally remained in the United States thereafter. In 1952 he registered under the provisions of the Alien Registration Act, but thereafter he willfully and without reasonable excuse failed to register annually as required by Section 265 of the 1952 Act (8 U. S. C. 1305, *supra,* p. 4) (R. 21–24).

In deportation proceedings commenced in 1954, petitioner was found deportable under Section 241 (a) (9), *supra,* p. 2, as a nonimmigrant who failed to comply with the conditions of such status, and under 241 (a) (5), *supra,* p. 2, as an alien who failed to comply with the registration requirements of Section 265. Petitioner's application for suspension of deportation was denied by the Special Inquiry Officer on the ground that, since petitioner was single and had no one in the United States dependent on him for support, he did not meet the hardship requirement essential to eligibility for suspension of deportation; and further that he failed to meet the ten-year residence requirement for eligibility (R. 42–43) fixed by Section 244 (a) (5) for persons deportable under Section 241 (a) (5).

Before the Board of Immigration Appeals, petitioner contended that he was eligible for suspension of deportation under the provisions of Section 244 (a) (1) which imposes only a seven-year residence requirement. The Board ruled that the application had to be considered under Section 244 (a) (5), with its ten-year requirement (R. 10–12). The Board found petitioner ineligible for such relief "since among other things, he does not meet the physical requirements of section 244 (a) (5)" (R. 12).

The District Court complaint attacked the ruling that petitioner's application for suspension could not be considered under Section 244 (a) (1) (R. 1–5), alleging, in paragraph 8, that he "does qualify under all the provisions of this section" (R. 3). The answer denied those portions of paragraph 8 "alleging the impropriety of the administrative denial of petitioner's application for suspension of deportation" (R. 14).

At the trial, it was stipulated by the parties that "there was no issue of fact to be tried by the Court and that the facts as found by the Board of Immigration Appeals and the Special Inquiry Officer during the course of the administrative proceedings * * * correctly stated the true factual situation" (R. 45). It was also orally stipulated that the sole question to be decided by the court was one of law, as follows (R. 45):

> Does the fact that plaintiff is admittedly statutorily ineligible for suspension of deportation under section 244 (a) (5) of the Immigration and Nationality Act (he, the plaintiff, not being able to meet the physical requirements of that section) preclude the plaintiff from pre-

> senting for consideration his application for suspension of deportation under section 244 (a) (1) of said Act, it being admitted that the plaintiff fully meets the requirements of the latter section?

Both the District Court (R. 45–46) and the Court of Appeals (Pet. App. 1a–10a) agreed with the Board of Immigration Appeals that petitioner's application for suspension could not be considered under Section 244 (a) (1).

ARGUMENT

Petitioner was found deportable because, among other things, he willfully violated the alien registration requirements of Section 265 of the Immigration and Nationality Act of 1952, during January 1953 and January 1954 (R. 16–17, 41–44). Section 244 (a) (5), which specifically covers eligibility for suspension of deportation under such circumstances, imposes as a condition ten-years of continuous residence from the date of such a deportable act. *Supra,* pp. 2–4. Petitioner admittedly cannot meet that requirement. Section 244 (a) (1), which has only a seven-year residence requirement, does not refer to this particular violation but is a more general provision relating to deportability "* * * under any law of the United States * * *." *Supra,* pp. 2–3. The issue presented in this case is whether petitioner can have his application for suspension considered under subsection (1) when he admittedly cannot meet the requirements of subsection (5).[1] The courts below properly held that he could not.

In the first place, "it is a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling". *Kepner* v. *United States,* 195 U. S. 100, 125; *Baltimore National Bank* v. *State Tax Commission of Maryland,* 297 U. S. 209, 215. Since petitioner falls very specifically within the purview of subdivision (5), his statutory eligibility for suspension of deportation was properly determined thereunder, and not under the much more general requirements of subdivision (1).

Moreover, it seems clear that Congress intended that an applicant for suspension of deportation who violates the Alien Registration Act should have his statutory eligibility for such relief determined only under subdivision (5). All the subdivisions of Section 244 (a) are meant to be mutually exclusive.[2] The possibility of overlap between subdivision (1) and (5) was almost completely foreclosed by the express language of the statute. Thus, aliens ineligible under Section 19 (d) of the 1917 Act (and hence under subdivision (1) of Section 244 (a) of the 1952 Act) correspond generally to those classes specifically covered by subdivision (5) of Section 244 (a). Although a like exclusion from subdivision (1) of applicants for suspension who are deportable for registration violations is not expressly spelled out in the Act, the reasonable analysis is that Congress intended such an exclusion since it expressly included that group in subdivision (5).

---

[1] It was stipulated in the District Court that this issue of law was the sole question presented by the case. We doubt the appropriateness of that stipulation in view of the administrative record on which the case rests. The Special Inquiry Officer based his decision against eligibility primarily on the ground that petitioner, who is single and has no one dependent on him for support, does not meet the test of "exceptional and extremely unusual hardship" imposed by the 1952 Act for eligibility for suspension of deportation (R. 42–43). This condition applies to applications under subsection (1) as well as under subsection (5). While the Board of Immigration Appeals did not expressly advert to this finding by the Special Inquiry Officer, it did state that it found nothing which "would cause us to make any change in the decision of the special inquiry officer" (R. 12). In view of this ruling on the hardship condition, the issue decided by the courts below would seem to be, in reality, academic.

Other factors support the same conclusion. Section 241 (a) (5) of the 1952 Act (*supra,* p. 2) prescribes deportation of those aliens violating the registration provisions of the new law and for the first time made deportable those previously convicted for violating the registration requirements of the old law.[3] Although obviously concerned with these violators, Congress did not wish to foreclose suspension of their deportation altogether. Rather, it expressly required that they meet the more stringent requirements of subdivision (5). Under that provision, a ten-year continuous residence after commission of the violation is required for statutory eligibility; under subdivision (1), there is only a seven-year residence requirement. Under (5), a concurrent Congressional resolution is required to cancel deportation proceedings where suspension is approved by the Attorney General; under (1), no such Congressional approval is necessary (Section 244 (c)): To say that an applicant may, at his option, meet instead the less severe conditions of subdivision (1) is to defeat the Congressional purpose.

---

[2] As the court below pointed out (Pet. App. 8a, 244 F. 2d at 183, n. 7):

"Paragraph (1) excludes all those in paragraphs (2)–(4) and part of paragraph (5) by means of the June 27, 1950, cut-off date; paragraph (2) deals with deportability arising from circumstances at or before entry, while paragraph (3) explicitly and paragraph (5) implicitly deals with those arising from post-entry circumstances; both paragraphs (2) and (3) explicitly exclude aliens falling into paragraph (4) and paragraph (3) also explicitly excludes those falling into paragraph (5); the provisions of paragraphs (4) and (5) are also explicitly or implicitly mutually exclusive; paragraph (5) in its principal part lists eleven grounds of deportability to which it applies, nine of which match exclusions under the former act which are not incorporated into paragraph (1), and one inclusion in paragraph (4) similarly matches one more exception to paragraph (1) * * *".

In addition, subdivision (5) is the only one which can fully deal with suspension of deportation whether the registration violation falls under the old law or under the 1952 Act. The terms of the subsection can apply both prospectively and retrospectively. Conversely, subdivision (1) is inappropriate to prospective violations since it is unavailable after December 24, 1957, and subdivisions (2)–(4) are inappropriate to many retroactive violations since those provisions are inapplicable to aliens entering prior to June 27, 1950. Subdivision (5) is the only one with no cut-off date.[4] It seems hardly likely that Congress, while so gravely concerned with registration violations as to make such offenses deportable for the first time whether committed before or after the 1952 Act, would, when deciding on the suspension requirements in those cases, intend that an applicant could nevertheless obtain suspension under the less stringent conditions of subdivision (1). And, as the Court of Appeals points out (Pet. App. 9a–10a), petitioner's construction of the statute would arbitrarily discriminate between aliens, committing registration offenses under the new Act, who entered the country before June 26, 1950, and those who entered thereafter.

---

[3] Prior to the 1952 Act, aliens who violated the registration and reporting provisions of the 1940 Alien Registration Act, 54 Stat. 673, 675, as amended, 8 U. S. C. 452, 456 (1946 ed.), while subject to criminal sanctions (54 Stat. 675, 8 U. S. C. 457 (1946 ed.)), were not made deportable for that reason.

Finally, there is no conflict of circuits. The contrary district court rulings, referred to by petitioner, in *Sevitt* v. *Del Guercio,* 150 F. Supp. 56 (S. D. Cal.), and *Cestaro* v. *Ryan,* decided on June 27, 1957 (D. Conn.), are presently pending on appeal to the Courts of Appeals for the Ninth and Second Circuits.

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[4] To argue that subdivision (1) is a "savings clause" and applies exclusively to pre-1950 entrants regardless of the deportable act and that therefore petitioner, who entered prior to 1950, falls solely within that provision is unnaturally to restrict suspension of deportation. For, on that theory, it would follow that a pre-1950 entrant found deportable for violating Section 265 would be debarred from suspension of deportation even if he were eligible under subdivision (5), where his application was made after the cut-off date (December 24, 1957) contained in subdivision (1).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1957.

U. S. GOVERNMENT PRINTING OFFICE: 1957

LIBRARY
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Office-Supreme Court, U.S.
FILED
MAR 28 1958
JOHN T. FEY, Clerk

No. 287

In the Supreme Court of the United States

OCTOBER TERM, 1957

GERYS DESSALERNOS, PETITIONER

v.

JOSEPH SAVORETTI, DISTRICT DIRECTOR, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, MIAMI, FLORIDA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

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GERYS DESSALERNOS, PETITIONER

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JOSEPH SAVORETTI, DISTRICT DIRECTOR, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, MIAMI, FLORIDA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Court of Appeals (R. 40–49) is reported at 244 F. 2d 178. The order of the District Court (R. 34–35) is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on April 22, 1957. The petition for a writ of certiorari was filed on July 17, 1957, and granted on October 14, 1957 (355 U. S. 809). The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether petitioner, who was ordered deported for failure to report as an alien, was required to meet the ten-year residence requirement fixed by subdivision (5) of Section 244(a) of the Immigration and Nationality Act of 1952, rather than the seven-year requirement fixed by subdivision (1), in order to be eligible for suspension of deportation.

STATUTES INVOLVED

1. The Immigration and Nationality Act of 1952, 66 Stat. 163, provides in pertinent part:

> Section 241 (a) [8 U. S. C. 1251(a)]. . .
>
> Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> * * * * *
>
> (5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 266(c) of this title, or under section 36(c) of the Alien Registration Act, 1940, * * *
>
> * * * * *
>
> (9) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status;
>
> * * * * *
>
> Section 244a [8 U. S. C. 1254a].
>
> As hereinafter prescribed in this section, the Attorney General may, in his discretion, sus-

pend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

(1) applies to the Attorney General within five years after the effective date of this Act for suspension of deportation; last entered the United States more than two years prior to the date of enactment of this Act; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

(2) last entered the United States within two years prior to or at any time after the date of enactment of this Act; is deportable under any law of the United States solely for an act committed or status existing prior to or at the time of such entry into the United States and is not within the provisions of paragraph (4) of this subsection; was possessed of all of the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately

preceding his application under this paragraph, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

(3) last entered the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under any law of the United States for an act committed or status acquired subsequent to such entry into the United States and is not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all of the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely

unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

(4) last entered the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under paragraph (1) of section 241(a) insofar as it relates to criminals, prostitutes or other immoral persons, subversives, violators of narcotic laws and similar classes or under paragraph (2) of section 241(a), as a person who entered the United States without inspection or at a time or place other than as designated by the Attorney General, or without the proper documents and is not within the provisions of paragraph (5) of this subsection; has been physically present in the United States for a continuous period of not less than ten years after such entry and immediately preceding his application under this paragraph and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

(5) is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241(a) for an act committed or status acquired subsequent to such entry

into the United States or having last entered the United States within two years prior to, or at any time after the date of enactment of this Act, is deportable under paragraph (2) of section 241(a) as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence.

* * * * *

Section 265 [8 U. S. C. 1305]

Every alien required to be registered under this title, or who was required to be registered under the Alien Registration Act, 1940, as amended, who is within the United States on the first day of January following the effective date of this Act, or on the first day of January of each succeeding year shall, within thirty days following such dates, notify the Attorney General in writing of his current address and furnish such additional information as may by regulations be required by the Attorney General. Any

> such alien shall likewise notify the Attorney General in writing of each change of address and new address within ten days from the date of such change. * * *

2. The pertinent provisions of Section 19 of the Act of 1917, as well as Section 241(a) of the 1952 Act in its entirety, are set forth in the Appendix, *infra*, pp. 36–47.

STATEMENT

This case arises from an action instituted by petitioner in the United States District Court for the Southern District of Florida. Petitioner's complaint sought a declaration that he was entitled to have his application for suspension of deportation considered by the Attorney General pursuant to Section 244(a)(1) of the Immigration and Nationality Act of 1952 (8 U. S. C. 1254(a)(1), *supra*, pp. 2–3).

Petitioner, a native and citizen of Greece, entered the United States on March 11, 1947, as a seaman on a certificate of admission which permitted a stay of not over 29 days. He illegally remained in the United States thereafter (R. 12–13). In 1952 he registered under the provisions of the Alien Registration Act, but thereafter he willfully and without reasonable excuse failed annually to report as required by Section 265 of the 1952 Act (8 U. S. C. 1305, *supra*, pp. 6–7) (R. 16–17, 28, 34).

In deportation proceedings commenced in 1954, petitioner was found deportable under Section 241(a)(9) (*supra*, p. 2) as a nonimmigrant who failed to comply with the conditions of such status, and under

Section 241(a)(5) (*supra,* p. 2) as an alien who failed to comply with the reporting requirements of Section 265. Petitioner's application for suspension of deportation was denied by the Special Inquiry Officer on the ground that, since petitioner was single and had no one in the United States dependent on him for support, he did not meet the hardship requirement essential to eligibility for suspension of deportation; and further that he failed to meet the ten-year residence requirement for eligibility fixed by Section 244(a)(5) for persons deportable under Section 241 (a)(5) (R. 31–34).

Before the Board of Immigration Appeals, petitioner contended that he was eligible for suspension of deportation under the provisions of Section 244(a)(1) which imposes only a seven-year residence requirement. The Board ruled that the application had to be considered under Section 244(a)(5), with its requirement of ten years residence after the deportable act (R. 6–8). The Board found petitioner ineligible for such relief "since among other things, he does not meet the physical requirements of section 244(a)(5)" (R. 8).

Petitioner's complaint in the District Court attacked the ruling that his application for suspension could not be considered under Section 244(a)(1) (R. A–3), alleging in paragraph 8 that he "does qualify under all the provisions of this section" (R. 2). The answer denied those portions of paragraph 8 "alleging the impropriety of the administrative denial of petitioner's application for suspension of deportation" (R. 9).

At the trial, according to the District Court's "Final Judgment" (R. 34), it was orally stipulated by the parties that "there was no issue of fact to be tried by the Court and that the facts as found by the Board of Immigration Appeals and the Special Inquiry Officer during the course of the administrative proceedings * * * correctly stated the true factual situation". The District Court's "Final Judgment" also recites that the parties further orally stipulated that the sole question to be decided by the court was as follows (R. 34–35):

> Does the fact that plaintiff is admittedly statutorily ineligible for suspension of deportation under section 244(a)(5) of the Immigration and Nationality Act (he, the plaintiff, not being able to meet the physical requirements of that section) preclude the plaintiff from presenting for consideration his application for suspension of deportation under section 244(a)(1) of said Act, it being admitted that the plaintiff fully meets the requirements of the latter section?

Both the District Court (R. 34–35) and the Court of Appeals (244 F. 2d 178) agreed with the Board of Immigration Appeals that petitioner's application for suspension could not be considered under Section 244(a)(1).

SUMMARY OF ARGUMENT

Petitioner was found deportable, under Section 241(a)(5) of the Immigration and Nationality Act of 1952, for failure to report as an alien in violation of Section 265 of the Act. Section 244(a)(5), making specific provision for that deportable offense, governs petitioner's application for suspension of deportation, rather than Section 244(a)(1).

A. Subdivision (5) of Section 244(a) covers those deportable offenses considered by Congress to be most serious.

1. In 1952 Congress recast completely the suspension provisions, setting up five separate categories with distinct eligibility requirements. Subdivision (1) extended for a limited time (until December 24, 1957) the privilege of suspension of deportation to those aliens who had entered the United States before June 27, 1950, were deportable under any law of the United States, and were not precluded from suspension under Section 19(d) of the Act of 1917 (as anarchists, narcotics violators, etc.); to be eligible under subdivision (1), the alien must show good moral character and continuous residence for seven years immediately preceding the date of application. Subdivisions (2), (3), and (4) deal with classes of aliens entering this country after June 27, 1950. Subdivision (5) is the only subdivision which applies without time limitation to aliens whose post-entry act makes them deportable for any of eleven specified offenses, including that of failure to report under Section 241(a)(5); to qualify for suspension under (5), the alien must establish continuous residence and good moral character for ten years from the date of the deportable act.

Manifestly, subdivision (5) covers the most serious post-entry offenders, since it not only has the stringent ten-year residence requirement but also, unlike (1), suspension granted under (5) requires affirmative approval by Congressional resolution. Consequently, when in 1952 Congress deemed registration and reporting offenses to be sufficiently grave as to warrant explicit coverage by (5), it could not have intended that such offenses might be covered by the less strict requirements of (1).

2. The fact that subdivision (5) is the only one having no time limitation as to entry and may apply both prospectively and retrospectively lends force to the view that it was meant to govern exclusively the offenses therein enumerated. Most of the specific post-entry offenses covered by subdivision (5) had previously been considered so serious that suspension of deportation was not permitted at all under former law. Hence, most of the offenses specified in (5) are excluded from (1) by virtue of the provision in (1) that its benefits should not extend to those who were not eligible for suspension under Section 19(d) of the 1917 Act.

The particular offense here involved occupies an anomalous position among the specific offenses enumerated in (5) in that it was not one of the offenses for which suspension could not have been granted under former Section 19(d). Congress did not make it a ground for deportation until the 1952 Act when it was made so under Section 241(a)(5). And in Section 244(a), dealing with suspension, Congress included this ground with those classified as most serious. The very fact that Congress placed this offense in the same classification as the group which theretofore had not been subject to provisions for suspension at all, and which were not to be differentiated by the time of entry, shows that Congress intended subdivision (5) to be controlling.

3. By requiring ten years' continuous residence "immediately following" the deportable act before suspension could be obtained under subdivision (5), Congress was clearly imposing the requirement that aliens deportable for the grounds there enumerated show a substantial period of reform before being eligible for suspension. To say that aliens rendered deportable for failure to report as required under Section 265 may nonetheless apply under 244(a)(1) could eliminate the probationary requirement in their case despite the fact that they were considered among the group of serious offenders and specifically included under (5) with those whose deportation could not have been suspended under former law.

B. The legislative history shows that Congress intended subdivision (5) to be controlling as to the offenses enumerated therein.

1. Petitioner's argument that Congress intended Section 244(a)(1) to be a "savings clause" applicable to all pre-1950 entrants fails to take into consideration the history of the bills which became the Act of 1952. As introduced in the 82nd Congress, S. 2550 did embody the concept urged by petitioner, in that all the subdivisions of 244(a) except (1) were limited to persons entering the United States two years before the enactment of the statute and at any subsqeuent time. On the other hand, the House bill, H. R. 5678, had a cut-off date only as to subdivision (1) but no limitation of any kind in subdivisions (2) through (5). This difference between the two versions was

not the subject of comment and not resolved until the report (H. Rep. 2096, 82nd Cong., 2d Sess.) of the conference committee, which drafted the bill in its present form, with some sort of a time limitation as to entry in every subdivision except the part of subdivision (5) dealing with the eleven specific post-entry offenses specifically enumerated in that subdivision. The removal of any limitation as to time of entry for the offenses regarded as serious enough to be included in (5) indicates that all aliens in that category would be required to meet the eligibility requirements of (5). Inasmuch as (5) applies both to pre-1950 and post-1950 entrants, the conditions of (5) apply to deportation for a ground specified therein regardless of the date of entry.

C. The conclusion that subdivision (5) is the governing provision in this case is reinforced by the fact that the language and legislative history of Section 244(a) evidence a design to keep the five subdivisions mutually exclusive.

1. The only overlapping between (1) and (5) under the literal language of the statute is as to pre-1950 entrants deportable for failure to report or for war security offenses. This is probably due to the fact that, while these offenses were not so seriously regarded in 1940, they were considered very important in 1952. The overlapping in this limited respect probably represents a legislative oversight. It does not affect the conclusion that the whole plan of the section indicates that the subdivisions were to be mutually exclusive, and that the statute should reasonably be interpreted to give effect to that intention.

2. The legislative purpose to keep the sections mutually exclusive is indicated by the comments of the Immigration and Naturalization Service on earlier versions containing other overlapping. In its analysis of S. 3455, pp. 244–1, 4, 6, 7–8, 9, the Service "strongly recommend[ed] that this apparent overlapping be eliminated * * *." The subsequent versions of the bill and the measure as finally adopted contained changes to meet such overlapping features pointed out by the Service.

D. The rule that a specific provision governs a more general one applies here. "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment." *Ginsberg and Sons* v. *Popkin,* 285 U. S. 204, 208; *Fourco Glass Co.* v. *Transmirra Corp.,* 353 U. S. 222, 228–229. The offense for which petitioner was found deportable is expressly covered by Section 244(a)(5), regardless of the date of the alien's entry. It therefore is controlling as to petitioner as against the more general language of subdivision (1) relating to an offense "under any law of the United States."

In totality, the language, legislative history, and rules of construction compel the conclusion that, by specifically including reporting violators under Section 244(a)(5), Congress intended that all such violators—including those like petitioner who entered prior to June 27, 1950—must show continuous residence and good moral character for at least ten years after the deportable offense before being eligible for suspension relief.

ARGUMENT

Before dealing with the issue decided by the courts below—*i. e.*, whether petitioner's application for suspension of deportation is governed by subdivision (1) or subdivision (5) of Section 244(a)—we feel obliged to point out again, as we did in our brief in opposition to the granting of certiorari, that this issue "would seem to be, in reality, academic" (Br. Opp. 8, n. 1) in this case.

The special inquiry officer, in denying the application, based his decision against eligibility primarily on the ground that petitioner, who is single and has no one dependent on him for support, "does not meet the requirement that his deportation result in exceptional and extremely unusual hardship to himself" and that any resulting hardship "would not be so exceptional and extremely unusual as to make his deportation unconscionable" (R. 33). The hardship requirement applies to applications under subdivision (1) as well as under subdivision (5). While the Board of Immigration Appeals did not expressly refer to this finding by the special inquiry officer, it did state that it found nothing in the case which "would cause us to make any change in the decision of the special inquiry officer" (R. 8). It would thus appear that, irrespective of which subdivision is held to govern petitioner's application for suspension, the decision cannot affect the denial of that application on a completely independent alternative ground.

In this connection, petitioner (Br. 2, 6, 7) apparently relies on an oral stipulation made in the District Court to the effect that the only question to be decided was whether the petitioner is entitled to have his application considered under subdivision (1), "it being admitted that [petitioner] fully meets the requirements of the latter section" (R. 34–35). This stipulation, if it means more than that petitioner met the residence requirement of subdivision (1), is inconsistent with the administrative record and also seems to be inconsistent with the additional stipulation "* * * that the facts as found by the Board of Immigration Appeals and the Special Inquiry Officer * * * correctly stated the true factual situation * * *" (R. 34). In any event, a stipulation would be ineffective to confer jurisdiction on a federal court by creating a justiciable controversy otherwise lacking. See *Swift & Co.* v. *Hocking Valley Ry. Co.*, 243 U. S. 281, 289; *Aetna Life Ins. Co.* v. *Haworth,* 300 U. S. 227, 240–241. Nor, in our view, should the stipulation be regarded as a waiver of the hardship requirement imposed by Congress as an indispensable condition for the granting of suspension relief to any alien.[1]

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[1] The 1952 Act radically revised the pre-existing hardship requirement for the avowed purpose of limiting suspension to those cases where deportation would be unconscionable. As put by the Senate Judiciary Committee in its report accompanying the bill which ultimately became the 1952 Act (S. Rep. No. 1137, 82d Cong., 2d Sess., p. 25):

> The term "exceptional and extremely unusual hardship" requires some explanation. The committee is aware that in almost all cases of deportation, hardship and frequently

In these circumstances, the question whether this Court has jurisdiction over this case, and if so whether it should be exercised here, is a matter which we submit to the Court for its consideration. Cf. ***Barr* v. *Matteo,*** 355 U. S. 171, 172, recently reaffirming this Court's general policy to "avoid rendering a decision beyond the obvious requirements of the record".

> unusual hardship is experienced by the alien or the members of his family who may be separated from the alien. The committee is aware, too, of the progressively increasing number of cases in which aliens are deliberately flouting our immigration laws by the processes of gaining admission into the United States illegally or ostensibly as nonimmigrants but with the intention of establishing themselves in a situation in which they may subsequently have access to some administrative remedy to adjust their status to that of permanent residents. This practice is grossly unfair to aliens who await their turn on the quota waiting lists and who are deprived of their quota numbers in favor of aliens who indulge in the practice. This practice is threatening our entire immigration system and the incentive for the practice must be removed. *Accordingly, under the bill, to justify the suspension of deportation the hardship must not only be unusual but must also be exceptionally and extremely unusual. The bill accordingly establishes a policy that the administrative remedy should be available only in the very limited category of cases in which the deportation of the alien would be unconscionable. Hardship or even unusual hardship to the alien or to his spouse, parent, or child is not sufficient to justify suspension of deportation.* * * * [Emphasis added.]

See also H. Rep. No. 1365, 82d Cong., 2d Sess., pp. 62–63; cf. *Hintopoulos* v. *Shaughnessy*, 353 U. S. 72, 76, n. 3; *Asikese* v. *Brownell*, 230 F. 2d 34, 36 (C. A. D. C.).

Having been found deportable for an offense—failure to report as an alien—specifically covered by subdivision (5) of Section 244 (a) of the Immigration and Nationality Act of 1952, petitioner was required to meet the 10-year residence requirement fixed by that subdivision, rather than the 7-year requirement fixed under subdivision (1), in order to be eligible for suspension of deportation

Petitioner was found deportable under Section 241 (a)(5) of the Immigration and Nationality Act of 1952 (*supra,* p. 2) for wilfully violating the reporting requirements of Section 265 of the Act (*supra,* pp. 6–7) during 1953 and January 1954.[2] Petitioner does not challenge the validity of the deportation order, but instead seeks suspension relief.

Section 244(a)(5) (*supra,* pp. 5–6) specifically prescribes the conditions of eligibility for suspension relief where an alien is deportable under Section 241(a)(5). One of these conditions is ten years' continuous residence from the date of the deportable act. Petitioner admittedly cannot meet such residence requirements. He argues, however, that he is entitled to have his eligibility determined under Section 244(a)(1), which requires seven years' residence prior to the application, since his offense constituted an act for which he was "deportable under any law of the United States" within the purview of that provision. It is undisputed that petitioner meets the 7-year residence requirement of subdivision (1).

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[2] He was also found deportable under Section 241(a)(9) (*supra*, p. 2) as a non-immigrant (here as an alien crewman) who failed to comply with the conditions of such status (R. 33–34).

The issue tendered in this case therefore is whether petitioner, despite his admitted failure to meet the more stringent requirements of eligibility fixed under subdivision (5), which specifically covers the violation for which he was found deportable, may nevertheless have his eligibility determined under subdivision (1). Our position is that the offenses specifically set forth in (5), including the offense of failure to register or report, are governed only by (5). We think that the subdivisions of Section 244(a) are structurally exclusive, but that, even if they are not, the governing provision would still be (5) relating specifically to the offense involved here, as against the more general language of (1).

A. Subdivision (5) relates to the deportable acts deemed by Congress to be the most serious

1. The concept of suspension of deportation for aliens who, while deportable, had proved themselves desirable residents, was first written into the immigration laws by the Alien Registration Act of 1940 (54 Stat. 671–672). At that time, Congress set up one general category—aliens with at least five years' residence and good moral character during the preceding five-year period whose deportation would involve economic detriment to a legally resident dependent of the alien. At the very same time, however, Congress set up certain categories to whom this type of relief should not be available at all. These were anarchists and similar classes, narcotics violators, mentally or physically deficient persons, those deportable for conviction of crimes involving moral

turpitude, aliens aiding others to enter illegally, and those convicted of carrying firearms or for subversive activities. The suspension of deportation by the Attorney General was to be final, unless disapproved by concurrent Congressional resolution.

In 1948, the class of aliens eligible for suspension was broadened to include those here on July 1, 1948, who, having seven years' continuous residence, proved good moral character during the preceding five years, even though they could not show hardship to dependents. The classes of persons ineligible for relief was left unchanged. However, express Congressional approval of the Attorney General's recommendation by enactment of a concurrent resolution was required before suspension became effective (Act of July 1, 1948, 62 Stat. 1206).[3]

In the 1952 Act, Congress reshaped completely the law dealing with suspension of deportation by setting up five separate and distinct categories under which deportable aliens might have their deportation suspended. The class applicable to each alien was made dependent on the date of entry and the nature of the deportable act. Each of these categories was set up so as to contain distinct eligibility requirements. The arrangement of the five subdivisions of Section 244(a) is as follows:

Subdivision (1) continued for a limited time (until December 24, 1957) the privilege of suspension of deportation for aliens who entered the United States *be-*

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[3] The provisions of Section 19(c) and (d) of the Act of 1917 which embodied these provisions are set forth in the Appendix, *infra*, pp. 37–39.

fore June 27, 1950, were deportable under any law of the United States, and were not guilty of major offenses which would disqualify them from suspension under Section 19 (d) of the Act of 1917, as amended. In addition to the unconscionable hardship requirement, which is the same under each subdivision,[4] this subdivision required a showing of continuous residence in the United States for seven years immediately preceding application for suspension, and good moral character during that time.

Subdivision (2) covers aliens who entered the United States at any time *after* June 27, 1950, and whose deportability derives from an act committed or a status existing prior to or at the time of entry, which is not covered by subdivision (4). Under this provision, there must be continuous residence and good moral character for five years immediately preceding the date of the application.

Subdivision (3) has the same requirements as (2) but relates to post-entry grounds for deportation and excludes aliens specifically covered in (4) and (5).

Subdivision (4) deals with post-June 27, 1950, entrants deportable for unlawful entry or deportable for entry or pre-entry major misbehavior (*e. g.*, prostitution, subversion, and narcotic violations) who are not covered by subdivision (5), and who establish ten years' continuous residence and good moral character from the date of entry.

Finally, subdivision (5) covers two groups of aliens: (a) those aliens entering *after* June 27, 1950, who overstay the period for which they were admitted, and (b) those, *regardless of the date of entry,* whose post-entry act makes them deportable for any one of 11 specified offenses (one of which is failure to report (Section 241(a)(5)). Both groups under (5) must establish ten years' continuous residence and good moral character from the date of the deportable act to qualify for suspension.[5]

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[4] See note 1, *supra*, pp. 16–17.

Additionally, suspension ordered by the Attorney General under subdivisions (1)-(3) is final unless disapproved by resolution of either House of Congress (Section 244(b)), whereas under (4) and (5) a concurrent resolution *approving* the grant of suspension is necessary to give it finality (Section 244(c)).

Subdivision (5) obviously included the group which Congress considered the most serious post-entry offenders. This is shown, not only by the stringent requirement of ten years' residence after the deportable act, but by the necessity for express approval of suspension by Congressional resolution. Hence, when Congress in 1952 decided that registration offenses by aliens were of a sufficiently grave character to come explicitly within the stringent provisions of subdivision (5), it could not have intended them to fall also within the more lenient provisions of subdivision (1).

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[5] The Immigration and Naturalization Service has construed this language of subdivision (5) "as requiring that before an application for suspension may be submitted, at least 10 years must have elapsed after the grounds for deportation arose and that during the 10 years immediately preceding the application, the alien must prove continuous physical presence in the United States and good moral character." *Matter of M.* ———, 5 I. & N. Dec. 261, 268; *Matter of P.* ———, 5 I. & N. Dec. 651, 656. To read the language literally and require good moral character and residence only for the exact ten-year period after the date of the deportable act would virtually eliminate the possibility that a reformed criminal—deportable under Section 241(a)(4) (conviction of a crime involving moral turpitude)—could ever apply for suspension under Section 244(a)(5) since following his deportable act he would probably be confined in prison for over 180 days, thus precluding a showing of good moral character for that period under Section 101 (f) (7).

2. Subdivision (5) is the only suspension provision having no time limitation as to entry. The terms of this subdivision (except for aliens overstaying the period for which they were admitted) apply both prospectively and retrospectively, whether the alien entered before or after 1950. In contrast, subdivision (1) applies only to persons entering before 1950, and subdivisions (2) to (4) only to those entering after 1950. This fact supports the view that (5) was intended to be the governing provision as to the offenses there specified. There was good reason why no time limitation was made in (5). Most of the specific post-entry offenses covered by subdivision (5) had previously been considered so serious that suspension of deportation was not permitted at all under former law. Hence, most of the offenses enumerated in subdivision (5) are excluded from subdivision (1) by virtue of the provision in (1) that its benefits should not extend to those who were not eligible for suspension under Section 19(d) of the 1917 Act, as amended.[6] For example, persons who had been

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[6] The opinion of the court below demonstrates this in graphic form (R. 41–48, fn. 7).

members of the Communist Party after entry were ineligible for suspension of deportation under the prior law, no matter how brief their membership or how far in the past. Under (5), however, such persons who do show genuine reform for a period of ten years after the deportable act and meet the other requirements of the subdivision, are given an opportunity to apply for suspension. Suspension has in fact been granted in proper cases under (5) to persons who entered before 1950. See Report on the Administration of the Immigration and Nationality Act, February 28, 1955, Committee on the Judiciary, House of Representatives, pp. 32–58, particularly at pp. 48–58.

In other words, as to the categories in (5), the 1952 Act represented for the most part an amelioration from the absolute ineligibility under prior law, although setting conditions for suspension more stringent than those fixed for less serious grounds for deportation. Since subdivision (5) was, therefore, for the most part conferring the privilege of suspension on certain aliens for the first time, it was not made subject to the time limitations of the other sections.

The particular offense here involved occupies an anomalous position among the specific offenses enumerated in subdivision (5) for the reason that it was not one of the offenses for which suspension could not have been granted under former Section 19(d). It was not even a ground for deportation until the 1952 Act. But by 1952 Congress had obviously reached the conclusion that this type of offense was a serious danger to security in that it prevented the tracing of aliens. The requirements for registration had been constantly strengthened. The provision for registration under pain of criminal sanctions had initially been imposed by the Alien Registration Act of 1940 (54 Stat. 671) and the provision for annual reporting, again with criminal penalties, by Section 24 of the Internal Security Act of 1950 (64 Stat. 987). In the 1952 Act, Congress still further strengthened the registration and reporting provisions by making willful violations grounds for deportation (Section 241(a)(5)). And in Section 244(a), dealing with suspension, it included this ground of deportation with those classified as the most serious. Similarly, the only other offenses enumerated in subdivision (5) of Section 244(a) which are not wholly excluded by the literal terms of subdivision (1) are convictions for war-time emergency and security laws made grounds for deportation under Section 241(a)(17).[7] These too are categories of offenses not particularly in the public mind when the classes of ineligibility for suspension were first established in 1940, but offenses very seriously regarded by 1952. The very fact that Congress put these types of offenses into the same classification as the group which theretofore had not been subject to provision for suspension at all, and which were not to be differentiated by the time of entry, shows that Congress must have intended subdivision (5) to be controlling.

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[7] To some extent, these offenses may be excluded from (1) by virtue of the fact that persons convicted of crimes involving moral turpitude were excluded under prior Section 19(d).

Indeed, to allow petitioner to apply under subdivision (1) would lead to the strange result that he would be entitled to the greater relief of suspension of deportation while not the lesser relief of voluntary departure. Section 244(e) authorizes the relief of voluntary departure to those aliens deportable under 241(a)(5) only if they are "*within* the provisions of paragraph (4) [or] (5)" of 244(a) (emphasis added), *i. e.,* having 10 years continuous residence and good moral character (*Matter of V.* ———, 6 I. & N. Dec. 723). It would seem that, if petitioner is not now entitled to voluntary departure, he is certainly not entitled to suspension of deportation. The provisions relating to voluntary departure indicate that Congress considered (4) and (5), with their more stringent provisions, exclusively applicable to the grounds for deportation enumerated therein.

3. By requiring ten years' continuous residence "immediately following" the deportable act before suspension could be obtained under subdivision (5), Congress plainly was requiring that aliens deportable for the grounds there enumerated show a substantial period of reform before being eligible for suspension. Registration violators, as we have noted, were considered among the group of serious offenders and specifically included under (5) with those whose deportation could not have been suspended under former law. To hold that pre-1950 violators may nonetheless apply under (1) could completely do away with the probationary requirement in their case. To illustrate, if petitioner (who entered in 1947) may apply under

(1), the result would be that, while having violated the reporting requirements in 1954, he nevertheless is able to meet the residence requirement of subdivision (1) in 1954, the very year of such violation, since he then would have resided here seven years "immediately preceding" his application. This would be wholly inconsistent with the view adopted in the 1952 Act and implicit in subdivision (5) that registration violations were serious offenses in a class with narcotics convictions and subversive activities.

Moreover, aliens entering after 1950 and thereafter failing to register or report could not apply for suspension under 244(a)(1) because of its cut-off date (December 24, 1957); they could apply only under 244(a)(5). As noted, the offense here involved, failure to report annually, was first established in 1950 and first made a ground for deportation in 1952. As pointed out by the court below (244 F. 2d at 184):

> It would * * * be highly anomalous for Congress, having expressed the more severe view it now takes of the offense of failure to register, to permit certain persons who violate the registration provisions of the new Act after its passage (e. g., as here, in 1953 and 1954) to receive more consideration than others who are guilty of precisely the same omission at precisely the same time, merely because the former entered the United States earlier than the latter. Such might be the result where both the entry and the offense occurred before the enactment of the new Act (or before the cut-off date two years earlier), but in the present situation, where the new Act gave notice of the more se-

vere consequences of a failure to comply and compliance was still not forthcoming, such a construction is not reasonable. Congress should not be thought to have created two categories of aliens, distinguishable only by their date of entry, whose improper behavior carries different consequences.

B. The legislative history shows that subdivision (5) was intended to be controlling as to the offenses enumerated therein

1. Petitioner (Br. 9, 12, 14) argues that Congress intended Section 244(a)(1) to be a "savings clause" applicable to all pre-1950 entrants and in substantial effect continuing prior law as to them for a period of five years until December 24, 1957.[8] He relies upon a suggestion to that effect in S. Rep. 1515, 81st Cong., 2d Sess., the study which preceded the Immigration Act of 1952. His argument, however, fails to take into consideration the history of the bills which became the 1952 Act.

As introduced in the 82d Congress, S. 2550[9] did embody the "savings clause" feature for which petitioner contends. Section 244(a)(1) applied to persons entering more than two years before the new enactment and had a cut-off date for applications by such aliens of five years after the enactment. All the other subdivisions of Section 244(a), including subdivision (5), were limited to persons entering the

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[8] It cannot be characterized as a true "savings clause" since it provided a condition not present in the former law, the condition of exceptional and unusual hardship.

[9] Earlier Senate versions, S. 716, 82d Cong., 1st Sess., and S. 3455, 81st Cong., 2d Sess., were similar in this respect.

United States two years before the enactment of the statute and at any subsequent time. On the other hand, the House bill, H. R. 5678, had a cut-off date only as to subdivision (1) but no limitation of any kind in subdivisions (2) through (5). This difference between the two versions was not the subject of comment and not resolved until the report (H. Rep. 2096, 82d Cong., 2d Sess.) of the conference committee, which drafted the bill in its present form, with some sort of a time limitation as to entry in every subdivision except the part of subdivision (5) dealing with the eleven post-entry offenses specifically enumerated therein. To recapitulate, subdivision (1) applies to persons entering before 1950; subdivisions (2), (3), and (4) and a part of (5) not here involved apply to persons entering after 1950; but the part of (5) relating to the eleven enumerated offenses is applicable regardless of the time of entry. While no specific explanation for this change was offered in the conference report (H. Rep. 2096, 82d Cong., 2d Sess.) or in the debates, the reason for this exception as to (5) is, as we have suggested, fairly evident. As to the specific offenses involved, most of which had theretofore rendered the alien ineligible to suspension, the privilege of suspension was to be granted to persons who had entered before 1950. But by the same token, the removal of any limitation as to time of entry as to those offenses indicates a purpose to require all aliens in that category to meet the eligibility requirements of (5).

As to pre-1950 entrants, subdivision (1) relates to grounds of deportation, whether pre-entry or post-entry, which were regarded as of less serious character. It would, for example, cover such a pre-entry ground for deportation as arrival from contiguous territory on a non-signatory vessel without the required period of stay in such foreign contiguous territory (241(a)(10)), or post-entry failure to maintain non-immigrant status (241(a)(9)).[10] These are grounds covered, as to post-1950 entrants, by subdivisions (2) and (3) which require only a 5-year period of residence.[11] But as to offenses enumerated in subdivision (5), regarded as of the most serious character, it seems clear that, inasmuch as (5) applies both to pre-1950 and post-1950 entrants, the conditions of (5) apply to deportation for a ground specified therein regardless of the date of entry.

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[10] In a case arising in the District Court for Connecticut, *Cestaro* v. *Ryan*, decided June 27, 1957, presently on appeal to the Second Circuit, the court reasoned that if the five subdivisions under Section 244(a) are deemed to be mutually exclusive, subdivision (1) would have no effect since subdivisions (2) through (5) embrace all deportable acts under 241 (a). Therefore, the court reasoned, subdivision (1) was a savings clause for pre-1950 entrants eligible for suspension under the 1917 Act, as amended. This analysis is faulty for the reason that subdivision (1) does have vitality without giving it such broad coverage in that, in general, it provides (for a limited period) a means whereby pre-1950 entrants may obtain suspension where deportation is based on lesser grounds.

[11] But see *Matter of B.* ———, Interim Dec. No. 845, Jan. 28, 1957. As to illegal entry (Section 241(a)(2)), post-1950 entrants are covered by the more stringent provisions of (4) rather than (2). As to older entrants, however, Congress left in effect its prior more-lenient attitude.

C. The five subdivisions of section 244(a) should be construed to be mutually exclusive

1. The conclusion that (5) is the governing subdivision in this case is strengthened by the fact that the language and legislative history of Section 244(a) show that, as the court below developed, the five subdivisions were intended to be mutually exclusive.

This purpose appears from the face of the statute. Subdivision (1) applies only to pre-1950 entrants; subdivisions (2)–(4) only to post-1950 entrants. As to post-1950 entrants, subdivision (2) deals with minor entry or pre-entry charges not covered by (4), while (4) deals with the major entry or pre-entry charges; subdivision (3) deals with minor post-entry charges not covered by (5), whereas (5) deals with major post-entry charges. The only place where this mutual exclusivity is not immediately apparent on the face of the statute is in relation to the eleven specific offenses enumerated in (5), as applied to pre-1950 entrants, since, as we have stressed, no limitation is there made as to time of entry. However, (1) and (5) are for the most part mutually exclusive on the face of the statute since most of the grounds specified in (5) would have rendered the alien ineligible for suspension under Section 19 (d) of the 1917 Act and therefore ineligible under (1). The only overlapping between (1) and (5) under the literal language of the statute is as to pre-1950 entrants deportable for failure to register or for war security offenses (see *supra*, p. 25). Such overlapping, which probably represents a mere legislative oversight, does not affect the conclusion that the whole plan of the section indicates that the subdivisions were to be mutually exclusive, and that the statute should reasonably be interpreted to give effect to that purpose.[12]

2. The legislative purpose to keep the subdivisions mutually exclusive is also evidenced by the history of the statute. As introduced, the Senate bill did not have the particular overlapping involved here since, as we have noted, it granted the benefits of subdivision (5) only to post-1950 entrants, but earlier versions did have other overlappings. In its analysis of an earlier version, S. 3455, introduced April 20, 1950, the Immigration and Naturalization Service pointed out that there was a possibility of an alien's being eligible under more than one of the proposed paragraphs. It noted that the less stringent subdivisions—*i. e.,* (2) and (3)—were broad enough to apply to aliens deportable as subversives whose rights to suspension were specifically covered by (4) and (5). It "strongly recommend[ed] that this apparent overlapping be eliminated * * *" and doubted "* * * whether the intention of setting up five *different* classes of such cases has been actually accomplished". See Analysis of S. 3455, a Bill to Revise the Laws

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[12] The mutual exclusivity apparent from the language of the statute disposes of petitioner's argument, based on the decision in *Sevitt* v. *Del Guercio*, 150 F. Supp. 56 (S. D. Cal.), presently pending on appeal to the Court of Appeals for the Ninth Circuit, that the use of the word "or" following each of the subdivisions indicated that Congress intended "to present a choice dependent only upon the alien meeting the standards as required in the particular paragraph he seeks to avail himself of" (150 F. Supp. at 59).

Relating to Immigration, Naturalization, and Nationality: and For Other Purposes, pp. 244–1, 4, 6, 7–8, 9. The subsequent versions of the bill and the measure as finally enacted contained changes to correct the overlapping pointed out by the Service.[13]

It seems evident that Congress was concerned with the possibility of overlap and sought to avoid it. The construction urged by petitioner, based on the fact that the literal language of these complex provisions falls slightly short of the apparent Congressional purpose, would thus defeat the obvious scheme of Section 244(a). As this Court has recently said, "Every statute must be interpreted in the light of reason and common understanding to reach the results intended by the legislature." *Rathbun* v. *United States,* 355 U. S. 107, 109. "[L]iteral interpretation of statutes at the expense of the reason of the law and producing absurd consequences or flagrant injustice has frequently been condemned." *Sorrells* v. *United States,* 287 U. S. 435, 446. If one reads subdivision (1) in the light of the overall Congressional purpose and with a view to giving a sensible meaning to the language employed, it becomes clear that to say subdivision (1) is applicable to an offense specifically covered by (5) would be contrary to "the results intended by the legislature."

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[13] The overlap pointed out by the Service was that, under S. 3455, subdivision (2) did not explicitly except the aliens falling under (4), and subdivision (3) did not explicitly except aliens covered by (4) and (5).

D. The rule that a specific provision governs a more general one is applicable here

As this Court has announced on numerous occasions: "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment." *Ginsberg & Sons* v. *Popkin,* 285 U. S. 204, 208. See also *Fourco Glass Co.* v. *Transmirra Corp.,* 353 U. S. 222, 228–229; *MacEvoy* v. *United States,* 322 U. S. 102, 107; *Baltimore National Bank* v. *State Tax Commission of Maryland,* 297 U. S. 209, 215; *Kepner* v. *United States,* 195 U. S. 100, 125; *United States* v. *Chase,* 135 U. S. 255, 260. The rationale is that a contrary approach would violate the cardinal rule that "* * * if possible effect shall be given to every clause and part of a statute." *Ginsberg & Sons* v. *Popkin, supra; Market Co.* v. *Hoffman,* 101 U. S. 112, 115; *Ex parte Public Bank,* 278 U. S. 101, 104. Cf. *McLeod* v. *Nagle,* 48 F. 2d 189, 191 (C. A. 9).

The offense for which petitioner was found deportable is expressly covered by Section 244(a)(5) regardless of the date of the alien's entry. It therefore governs petitioner's application, as against the more general language of subdivision (1) relating to an offense "under any law of the United States."[14] This would be true under settled rules of statutory construction without the other evidences of legislative purpose to which we have adverted.

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[14] This phrase did not appear in subdivision (1) when the bill was first introduced in the Senate (S. 3455). Rather, its inclusion was suggested by the Immigration Service "to prevent * * * [the use of the subdivision by] temporary visitors, or Government officials, etc., who may be in a legal temporary

In totality, the pertinent language, legislative history, and rules of construction compel the conclusion that, by specifically including registration violators under Section 244(a)(5) along with the most serious offenders, Congress meant to provide that all such violators—including those like petitioner who entered prior to June 27, 1950—must show continuous residence and good moral character for at least ten years after the deportable offense in order to be eligible for suspension relief.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

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MARCH 1958.

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status and who desire to adjust their immigration status to that of permanent residents under this section"—in other words, to make it clear that "* * * the alien must be deportable before he can apply for suspension of deportation." Analysis of S. 3455, pp. 244-2.

APPENDIX

1. Section 19 of the Immigration Act of 1917, 39 Stat. 889, as amended by 54 Stat. 671, provided in pertinent part:

> (b) Any alien of any of the classes specified in this subsection, in addition to aliens who are deportable under other provisions of law, shall, upon warrant of the Attorney General, be taken into custody and deported:
>
> (1) Any alien who, at any time within five years after entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.
>
> (2) Any alien who, at any time after entry, shall have on more than one occasion, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien or aliens to enter or to try to enter the United States in violation of law.
>
> (3) Any alien who, at any time after entry, shall have been convicted of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semi-automatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun.
>
> (4) Any alien who, at any time within five years after entry, shall have been convicted of violating the provisions of title I of the Alien Registration Act, 1940.

(5) Any alien who, at any time after entry, shall have been convicted more than once of violating the provisions of title I of the Alien Registration Act, 1940.

No alien who is deportable under the provisions of paragraph (3), (4), or (5) of this subsection shall be deported until the termination of his imprisonment or the entry of an order releasing him on probation or parole.

(c) In the case of any alien (other than one to whom subsection (d) is applicable) who is deportable under any law of the United States and who has proved good moral character for the preceding five years, the Attorney General may (1) permit such alien to depart the United States to any country of his choice at his own expense, in lieu of deportation, or (2) suspend deportation of such alien if not racially inadmissible or ineligible to naturalization in the United States if he finds that such deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien. If the deportation of any alien is suspended under the provisions of this subsection for more than six months, all of the facts and pertinent provisions of law in the case shall be reported to the Congress within ten days after the beginning of its next regular session, with the reasons for such suspension. The Clerk of the House shall have such report printed as a public document. If during that session the two Houses pass a concurrent resolution stating in substance that the Congress does not favor the suspension of such deportation, the Attorney General shall thereupon deport such alien in the manner provided by law. If during that session the two Houses do not pass such a resolution, the Attorney General shall cancel deportation proceedings upon the termination of such session, except that such proceedings shall not be canceled in the case of any alien who was not legally admitted for permanent residence at the time of his last entry into the United States, unless such alien pays to the Commissioner of Immigration and Naturalization a fee of $18 (which fee shall be deposited in the Treasury of the United States as miscellaneous receipts). Upon the cancellation of such proceedings in any case in which such fee has been paid, the Commissioner shall record the alien's admission for permanent residence as of the date of his last entry into the United States and the Secretary of State shall, if the alien was a quota immigrant at the time of entry and was not charged to the appropriate quota, reduce by one the immigration quota of the country of the alien's nationality as defined in section 12 of the Act of May 26, 1924 (U. S. C., title 8, sec. 212), for the fiscal year then current or next following.

(d) The provisions of subsection (c) shall not be applicable in the case of any alien who is deportable under (1) the Act of October 16, 1918 (40 Stat. 1008; U. S. C., title 8, sec. 137), entitled "An Act to exclude and expel from the United States aliens who are members of the anarchist and similar classes", as amended; (2) the Act of May 26, 1922, entitled "An Act to amend the Act entitled 'An Act to prohibit the importation and use of opium for other than medicinal purposes', approved February 9, 1909, as amended" (42 Stat. 596; U. S. C., title 21, sec. 175); (3) the Act of February 18, 1931, entitled "An Act to provide for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics", as amended (46 Stat. 1171; U. S. C., title 8, sec. 156a); (4) any of the provisions of so much of subsection (a) of this section as relates to criminals, prostitutes, procurers, or other immoral persons, the mentally and physically deficient, anarchists, and similar classes; or (5) subsection (b) of this section.

2. Section 241 (a) of the 1952 Act [8 U. S. C. 1251 (a)] provides in its entirety:

> Sec. 241. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> (1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;
>
> (2) entered the United States without inspection or at any time or place other than as designated by theAttorney General or is in the United States in violation of this Act or in violation of any other law of the United States;
>
> (3) hereafter, within five years after entry, becomes institutionalized at public expense because of mental disease, defect, or deficiency, unless the alien can show that such disease, defect, or deficiency did not exist prior to his admission to the United States;
>
> (4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or

confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;

(5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 266 (c) of this title, or under section 36 (c) of the Alien Registration Act, 1940, or has been convicted of violating or conspiracy to violate any provision of the Act entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", approved June 8, 1938, as amended, or has been convicted under section 1546 of title 18 of the United States Code;

(6) is or at any time has been, after entry, a member of any of the following classes of aliens:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States; (ii) any other totalitarian party of the United States; (iii) the Communist Political Association; (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided,* That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization,

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (G):

(7) is engaged, or at any time after entry has engaged, or at any time after entry has had a purpose to engage, in any of the activities described in paragraph (27) or (29) of section 212 (a), unless the Attorney General is satisfied, in the case of any alien within category (C) of paragraph (29) of such section, that such alien did not have knowledge or reason to believe at the time such alien became a member of, affiliated with, or participated in the activities of the organization (and did not thereafter and prior to the date upon which such organization was registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950 have such knowledge or

reason to believe) that such organization was a Communist organization;

(8) in the opinion of the Attorney General, has within five years after entry become a public charge from causes not affirmatively shown to have arisen after entry;

(9) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status;

(10) entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 238 (a) and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien who is a native-born citizen of any of the countries enumerated in section 101 (a) (27) (C) and an alien described in section 101 (a) (27) (B));

(11) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs, or who has been convicted of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, marihuana, any salt deriva-

tive or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate;

(12) by reason of any conduct, behavior or activity at any time after entry became a member of any of the classes specified in paragraph (12) of section 212 (a); or is or at any time after entry has been the manager, or is or at any time after entry has been connected with the management, of a house of prostitution or any other immoral place;

(13) prior to, or at the time of any entry, or at any time within five years after any entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law;

(14) at any time after entry, shall have been convicted of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semiautomatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun;

(15) at any time within five years after entry, shall have been convicted of violating the provisions of title I of the Alien Registration Act, 1940;

(16) at any time after entry, shall have been convicted more than once of violating the provisions of title I of the Alien Registration Act, 1940; or

(17) the Attorney General finds to be an undesirable resident of the United States by reason of any of the following, to wit: has been

or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts or any amendment thereto, the judgment on such conviction having become final, namely: an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes", approved June 15, 1917, or the amendment thereof approved May 16, 1918; sections 791, 792, 793, 794, 2388, and 3241, title 18, United States Code; an Act entitled "An Act to prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes", approved October 6, 1917; an Act entitled "An Act to prevent in time of war departure from and entry into the United States contrary to the public safety", approved May 22, 1918; section 215 of this Act; an Act entitled "An Act to punish the willful injury or destruction of war material or of war premises or utilities used in connection with war material, and for other purposes", approved April 20, 1918; sections 2151, 2153, 2154, 2155, and 2156 of title 18, United States Code; an Act entitled "An Act to authorize the President to increase temporarily the Military establishment of the United States", approved May 18, 1917, or any amendment thereof or supplement thereto; the Selective Training and Service Act of 1940; the Selective Service Act of 1948;

the Universal Military Training and Service Act; an Act entitled "An Act to punish persons who make threats against the President of the United States", approved February 14, 1917; section 871 of title 18, United States Code; an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes", approved October 6, 1917, or any amendment thereof; the Trading With the Enemy Act; section 6 of the Penal Code of the United States; section 2384 of title 18, United States Code; has been convicted of any offense against section 13 of the Penal Code of the United States committed during the period of August 1, 1914, to April 6, 1917, or of a conspiracy occurring within said period to commit an offense under said section 13 or of any offense committed during said period against the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, in aid of a belligerent in the European war; section 960 of title 18, United States Code; or

(18) has been convicted under section 278 of this Act or under section 4 of the Immigration Act of February 5, 1917.

U. S. GOVERNMENT PRINTING OFFICE: 1958